

House of Representatives, April 8, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT ADDING ARTICLE 2A ON LEASES TO THE UNIFORM COMMERCIAL CODE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW)

2 ARTICLE 2A

3 LEASES

4 PART 1. GENERAL PROVISIONS

5 SECTION 2A-101. SHORT TITLE.

6 This article shall be known and may be cited
7 as the Uniform Commercial Code - Leases.

8 SECTION 2A-102. SCOPE.

9 This article applies to any transaction,
10 regardless of form, that creates a lease.

11 SECTION 2A-103. DEFINITIONS AND INDEX OF
12 DEFINITIONS.

13 (1) In this article unless the context
14 otherwise requires:

15 (a) "Buyer in ordinary course of business"
16 means a person who in good faith and without
17 knowledge that the sale to him is in violation of
18 the ownership rights or security interest or
19 leasehold interest of a third party in the goods,

20 buys in ordinary course from a person in the
21 business of selling goods of that kind but does
22 not include a pawnbroker. "Buying" may be for cash
23 or by exchange of other property or on secured or
24 unsecured credit and includes receiving goods or
25 documents of title under a pre-existing contract
26 for sale but does not include a transfer in bulk
27 or as security for or in total or partial
28 satisfaction of a money debt.

29 (b) "Cancellation" occurs when either party
30 puts an end to the lease contract for default by
31 the other party.

32 (c) "Commercial unit" means such a unit of
33 goods as by commercial usage is a single whole for
34 purposes of lease and division of which materially
35 impairs its character or value on the market or in
36 use. A commercial unit may be a single article, as
37 a machine, or a set of articles, as a suite of
38 furniture or a line of machinery, or a quantity,
39 as a gross or carload, or any other unit treated
40 in use or in the relevant market as a single
41 whole.

42 (d) "Conforming" goods or performance under a
43 lease contract means goods or performance that are
44 in accordance with the obligations under the lease
45 contract.

46 (e) "Consumer lease" means a lease that a
47 lessor regularly engaged in the business of
48 leasing or selling makes to a lessee who is an
49 individual and who takes under the lease primarily
50 for a personal, family, or household purpose.

51 (f) "Fault" means wrongful act, omission,
52 breach, or default.

53 (g) "Finance lease" means a lease with
54 respect to which:

55 (i) The lessor does not select, manufacture,
56 or supply the goods;

57 (ii) The lessor acquires the goods or the
58 right to possession and use of the goods in
59 connection with the lease; and

60 (iii) One of the following occurs: (A) The
61 lessee receives a copy of the contract by which
62 the lessor acquired the goods or the right to
63 possession and use of the goods before signing the
64 lease contract;

65 (B) The lessee's approval of the contract by
66 which the lessor acquired the goods or the right

67 to possession and use of the goods is a condition
68 to effectiveness of the lease contract;

69 (C) The lessee, before signing the lease
70 contract, receives an accurate and complete
71 statement designating the promises and warranties,
72 and any disclaimers of warranties, limitations or
73 modifications of remedies, or liquidated damages,
74 including those of a third party, such as the
75 manufacturer of the goods, provided to the lessor
76 by the person supplying the goods in connection
77 with or as part of the contract by which the
78 lessor acquired the goods or the right to
79 possession and use of the goods; or

80 (D) If the lease is not a consumer lease, the
81 lessor, before the lessee signs the lease
82 contract, informs the lessee in writing (a) of the
83 identity of the person supplying the goods to the
84 lessor, unless the lessee has selected that person
85 and directed the lessor to acquire the goods or
86 the right to possession and use of the goods from
87 that person, (b) that the lessee is entitled under
88 this article to the promises and warranties,
89 including those of any third party, provided to
90 the lessor by the person supplying the goods in
91 connection with or as part of the contract by
92 which the lessor acquired the goods or the right
93 to possession and use of the goods, and (c) that
94 the lessee may communicate with the person
95 supplying the goods to the lessor and receive an
96 accurate and complete statement of those promises
97 and warranties, including any disclaimers and
98 limitations of them or of remedies.

99 (h) "Goods" means all things that are movable
100 at the time of identification to the lease
101 contract, or are fixtures (Section 2A-309), but
102 the term does not include money, documents,
103 instruments, accounts, chattel paper, general
104 intangibles, minerals or the like, including oil
105 and gas, before extraction or goods as defined in
106 subdivision (6) of subsection (c) of section
107 36a-770 of the general statutes. The term also
108 includes the unborn young of animals.

109 (i) "Instalment lease contract" means a lease
110 contract that authorizes or requires the delivery
111 of goods in separate lots to be separately
112 accepted, even though the lease contract contains
113 a clause "each delivery is a separate lease" or
114 its equivalent.

115 (j) "Lease" means a transfer of the right to
116 possession and use of goods for a term in return
117 for consideration, but a sale, including a sale on
118 approval or a sale or return, or retention or
119 creation of a security interest is not a lease.
120 Unless the context clearly indicates otherwise,
121 the term includes a sublease.

122 (k) "Lease agreement" means the bargain, with
123 respect to the lease, of the lessor and the lessee
124 in fact as found in their language or by
125 implication from other circumstances including
126 course of dealing or usage of trade or course of
127 performance as provided in this article. Unless
128 the context clearly indicates otherwise, the term
129 includes a sublease agreement.

130 (l) "Lease contract" means the total legal
131 obligation that results from the lease agreement
132 as affected by this article and any other
133 applicable rules of law. Unless the context
134 clearly indicates otherwise, the term includes a
135 sublease contract.

136 (m) "Leasehold interest" means the interest
137 of the lessor or the lessee under a lease
138 contract.

139 (n) "Lessee" means a person who acquires the
140 right to possession and use of goods under a
141 lease. Unless the context clearly indicates
142 otherwise, the term includes a sublessee.

143 (o) "Lessee in ordinary course of business"
144 means a person who in good faith and without
145 knowledge that the lease to him is in violation of
146 the ownership rights or security interest or
147 leasehold interest of a third party in the goods
148 leases in ordinary course from a person in the
149 business of selling or leasing goods of that kind
150 but does not include a pawnbroker. "Leasing" may
151 be for cash or by exchange of other property or on
152 secured or unsecured credit and includes receiving
153 goods or documents of title under a pre-existing
154 lease contract but does not include a transfer in
155 bulk or as security for or in total or partial
156 satisfaction of a money debt.

157 (p) "Lessor" means a person who transfers the
158 right to possession and use of goods under a
159 lease. Unless the context clearly indicates
160 otherwise, the term includes a sublessor.

161 (q) "Lessor's residual interest" means the
162 lessor's interest in the goods after expiration,

163 termination, or cancellation of the lease
164 contract.

165 (r) "Lien" means a charge against or interest
166 in goods to secure payment of a debt or
167 performance of an obligation, but the term does
168 not include a security interest.

169 (s) "Lot" means a parcel or a single article
170 that is the subject matter of a separate lease or
171 delivery, whether or not it is sufficient to
172 perform the lease contract.

173 (t) "Merchant lessee" means a lessee that is
174 a merchant with respect to goods of the kind
175 subject to the lease.

176 (u) "Present value" means the amount as of a
177 date certain of one or more sums payable in the
178 future, discounted to the date certain. The
179 discount is determined by the interest rate
180 specified by the parties if the rate was not
181 manifestly unreasonable at the time the
182 transaction was entered into; otherwise, the
183 discount is determined by a commercially
184 reasonable rate that takes into account the facts
185 and circumstances of each case at the time the
186 transaction was entered into.

187 (v) "Purchase" includes taking by sale,
188 lease, mortgage, security interest, pledge, gift,
189 or any other voluntary transaction creating an
190 interest in goods.

191 (w) "Sublease" means a lease of goods the
192 right to possession and use of which was acquired
193 by the lessor as a lessee under an existing lease.

194 (x) "Supplier" means a person from whom a
195 lessor buys or leases goods to be leased under a
196 finance lease.

197 (y) "Supply contract" means a contract under
198 which a lessor buys or leases goods to be leased.

199 (z) "Termination" occurs when either party
200 pursuant to a power created by agreement or law
201 puts an end to the lease contract otherwise than
202 for default.

203 (2) Other definitions applying to this
204 article and the sections in which they appear are:

205 "Accessions". Section 2A-310(1).

206 "Construction mortgage". Section
207 2A-309(1)(d).

208 "Encumbrance". Section 2A-309(1)(e).

209 "Fixtures". Section 2A-309(1)(a).

210 "Fixture filing". Section 2A-309(1)(b).

211 "Purchase money lease". Section 2A-309(1)(c).
212 (3) The following definitions in other
213 articles apply to this article:
214 "Account". Section 9-106.
215 "Between merchants". Section 2-104(3).
216 "Buyer". Section 2-103(1)(a).
217 "Chattel paper". Section 9-105(1)(b).
218 "Consumer goods". Section 9-109(1).
219 "Document". Section 9-105(1)(f).
220 "Entrusting". Section 2-403(3).
221 "General intangibles". Section 9-106.
222 "Good faith". Section 2-103(1)(b).
223 "Instrument". Section 9-105(1)(i).
224 "Merchant". Section 2-104(1).
225 "Mortgage". Section 9-105(1)(j).
226 "Pursuant to commitment". Section
227 9-105(1)(k).
228 "Receipt". Section 2-103(1)(c).
229 "Sale". Section 2-106(1).
230 "Sale on approval". Section 2-326.
231 "Sale or return". Section 2-326.
232 "Seller". Section 2-103(1)(d).
233 (4) In addition, article 1 contains general
234 definitions and principles of construction and
235 interpretation applicable throughout this article.
236 SECTION 2A-104. LEASES SUBJECT TO OTHER LAW.
237 (1) A lease, although subject to this
238 article, is also subject to any applicable:
239 (a) Certificate of title statute of this
240 state;
241 (b) Certificate of title statute of another
242 jurisdiction (Section 2A-105); or
243 (c) Consumer protection statute of this
244 state, or final consumer protection decision of a
245 court of this state existing on the effective date
246 of this act.
247 (2) In case of conflict between this article,
248 other than Sections 2A-105, 2A-304(3), and
249 2A-305(3), and a statute or decision referred to
250 in subsection (1), the statute or decision
251 controls.
252 (3) Failure to comply with an applicable law
253 has only the effect specified therein.
254 SECTION 2A-105. TERRITORIAL APPLICATION OF
255 ARTICLE TO GOODS COVERED BY CERTIFICATE OF TITLE.
256 Subject to the provisions of Sections
257 2A-304(3) and 2A-305(3), with respect to goods
258 covered by a certificate of title issued under a

259 statute of this state or of another jurisdiction,
260 compliance and the effect of compliance or
261 noncompliance with a certificate of title statute
262 are governed by the law, including the conflict of
263 laws rules, of the jurisdiction issuing the
264 certificate until the earlier of (a) surrender of
265 the certificate, or (b) four months after the
266 goods are removed from that jurisdiction and
267 thereafter until a new certificate of title is
268 issued by another jurisdiction.

269 SECTION 2A-106. LIMITATION ON POWER OF
270 PARTIES TO CONSUMER LEASE TO CHOOSE APPLICABLE LAW
271 AND JUDICIAL FORUM.

272 (1) If the law chosen by the parties to a
273 consumer lease is that of a jurisdiction other
274 than a jurisdiction in which the lessee resides at
275 the time the lease agreement becomes enforceable
276 or within thirty days thereafter or in which the
277 goods are to be used, the choice is not
278 enforceable.

279 (2) If the judicial forum chosen by the
280 parties to a consumer lease is a forum that would
281 not otherwise have jurisdiction over the lessee,
282 the choice is not enforceable.

283 SECTION 2A-107. WAIVER OR RENUNCIATION OF
284 CLAIM OR RIGHT AFTER DEFAULT.

285 Any claim or right arising out of an alleged
286 default or breach of warranty may be discharged in
287 whole or in part without consideration by a
288 written waiver or renunciation signed and
289 delivered by the aggrieved party.

290 SECTION 2A-108. UNCONSCIONABILITY.

291 (1) If the court as a matter of law finds a
292 lease contract or any clause of a lease contract
293 to have been unconscionable at the time it was
294 made the court may refuse to enforce the lease
295 contract, or it may enforce the remainder of the
296 lease contract without the unconscionable clause,
297 or it may so limit the application of any
298 unconscionable clause as to avoid any
299 unconscionable result.

300 (2) With respect to a consumer lease, if the
301 court as a matter of law finds that a lease
302 contract or any clause of a lease contract has
303 been induced by unconscionable conduct or that
304 unconscionable conduct has occurred in the
305 collection of a claim arising from a lease
306 contract, the court may grant appropriate relief.

307 (3) Before making a finding of
308 unconscionability under subsection (1) or (2), the
309 court, on its own motion or that of a party, shall
310 afford the parties a reasonable opportunity to
311 present evidence as to the setting, purpose, and
312 effect of the lease contract or clause thereof, or
313 of the conduct.

314 (4) In an action in which the lessee claims
315 unconscionability with respect to a consumer
316 lease:

317 (a) If the court finds unconscionability
318 under subsection (1) or (2), the court shall award
319 reasonable attorney's fees to the lessee.

320 (b) If the court does not find
321 unconscionability and the lessee claiming
322 unconscionability has brought or maintained an
323 action he knew to be groundless, the court shall
324 award reasonable attorney's fees to the party
325 against whom the claim is made.

326 (c) In determining attorney's fees, the
327 amount of the recovery on behalf of the claimant
328 under subsections (1) and (2) is not controlling.

329 SECTION 2A-109. OPTION TO ACCELERATE AT WILL.

330 (1) A term providing that one party or his
331 successor in interest may accelerate payment or
332 performance or require collateral or additional
333 collateral "at will" or "when he deems himself
334 insecure" or in words of similar import must be
335 construed to mean that he has power to do so only
336 if he in good faith believes that the prospect of
337 payment or performance is impaired.

338 (2) With respect to a consumer lease, the
339 burden of establishing good faith under subsection
340 (1) is on the party who exercised the power;
341 otherwise the burden of establishing lack of good
342 faith is on the party against whom the power has
343 been exercised.

344 PART 2. FORMATION AND CONSTRUCTION OF LEASE
345 CONTRACT

346 SECTION 2A-201. STATUTE OF FRAUDS.

347 (1) A lease contract is not enforceable by
348 way of action or defense unless:

349 (a) The total payments to be made under the
350 lease contract, excluding payments for options to
351 renew or buy, are less than one thousand dollars;
352 or

353 (b) There is a writing, signed by the party
354 against whom enforcement is sought or by that

355 party's authorized agent, sufficient to indicate
356 that a lease contract has been made between the
357 parties and to describe the goods leased and the
358 lease term.

359 (2) Any description of leased goods or of the
360 lease term is sufficient and satisfies subsection
361 (1)(b), whether or not it is specific, if it
362 reasonably identifies what is described.

363 (3) A writing is not insufficient because it
364 omits or incorrectly states a term agreed upon,
365 but the lease contract is not enforceable under
366 subsection (1)(b) beyond the lease term and the
367 quantity of goods shown in the writing.

368 (4) A lease contract that does not satisfy
369 the requirements of subsection (1), but which is
370 valid in other respects, is enforceable:

371 (a) If the goods are to be specially
372 manufactured or obtained for the lessee and are
373 not suitable for lease or sale to others in the
374 ordinary course of the lessor's business, and the
375 lessor, before notice of repudiation is received
376 and under circumstances that reasonably indicate
377 that the goods are for the lessee, has made either
378 a substantial beginning of their manufacture or
379 commitments for their procurement;

380 (b) If the party against whom enforcement is
381 sought admits in that party's pleading, testimony
382 or otherwise in court that a lease contract was
383 made, but the lease contract is not enforceable
384 under this provision beyond the quantity of goods
385 admitted; or

386 (c) With respect to goods that have been
387 received and accepted by the lessee.

388 (5) The lease term under a lease contract
389 referred to in subsection (4) is:

390 (a) If there is a writing signed by the party
391 against whom enforcement is sought or by that
392 party's authorized agent specifying the lease
393 term, the term so specified;

394 (b) If the party against whom enforcement is
395 sought admits in that party's pleading, testimony,
396 or otherwise in court a lease term, the term so
397 admitted; or

398 (c) A reasonable lease term.

399 SECTION 2A-202. FINAL WRITTEN EXPRESSION:
400 PAROL OR EXTRINSIC EVIDENCE.

401 Terms parties agree or which are otherwise
402 set forth in a writing intended by the parties as

403 a final expression of their agreement with respect
404 to such terms as are included therein may not be
405 contradicted by evidence of any prior agreement or
406 of a contemporaneous oral agreement but may be
407 explained or supplemented:

408 (a) By course of dealing or usage of trade or
409 by course of performance; and

410 (b) By evidence of consistent additional
411 terms unless the court finds the writing to have
412 been intended also as a complete and exclusive
413 statement of the terms of the agreement.

414 SECTION 2A-203. SEALS INOPERATIVE.

415 The affixing of a seal to a writing
416 evidencing a lease contract or an offer to enter
417 into a lease contract does not render the writing
418 a sealed instrument and the law with respect to
419 sealed instruments does not apply to the lease
420 contract or offer.

421 SECTION 2A-204. FORMATION IN GENERAL.

422 (1) A lease contract may be made in any
423 manner sufficient to show agreement, including
424 conduct by both parties which recognizes the
425 existence of a lease contract.

426 (2) An agreement sufficient to constitute a
427 lease contract may be found although the moment of
428 its making is undetermined.

429 (3) Although one or more terms are left open,
430 a lease contract does not fail for indefiniteness
431 if the parties have intended to make a lease
432 contract and there is a reasonably certain basis
433 for giving an appropriate remedy.

434 SECTION 2A-205. FIRM OFFERS.

435 An offer by a merchant to lease goods to or
436 from another person in a signed writing that by
437 its terms gives assurance it will be held open is
438 not revocable, for lack of consideration, during
439 the time stated or, if no time is stated, for a
440 reasonable time, but in no event may the period of
441 irrevocability exceed three months. Any such term
442 of assurance on a form supplied by the offeree
443 must be separately signed by the offeror.

444 SECTION 2A-206. OFFER AND ACCEPTANCE IN
445 FORMATION OF LEASE CONTRACT.

446 (1) Unless otherwise unambiguously indicated
447 by the language or circumstances, an offer to make
448 a lease contract must be construed as inviting
449 acceptance in any manner and by any medium
450 reasonable in the circumstances.

451 (2) If the beginning of a requested
452 performance is a reasonable mode of acceptance, an
453 offeror who is not notified of acceptance within a
454 reasonable time may treat the offer as having
455 lapsed before acceptance.

456 SECTION 2A-207. COURSE OF PERFORMANCE OR
457 PRACTICAL CONSTRUCTION.

458 (1) If a lease contract involves repeated
459 occasions for performance by either party with
460 knowledge of the nature of the performance and
461 opportunity for objection to it by the other, any
462 course of performance accepted or acquiesced in
463 without objection is relevant to determine the
464 meaning of the lease agreement.

465 (2) The express terms of a lease agreement
466 and any course of performance, as well as any
467 course of dealing and usage of trade, must be
468 construed whenever reasonable as consistent with
469 each other; but if that construction is
470 unreasonable, express terms control course of
471 performance, course of performance controls both
472 course of dealing and usage of trade, and course
473 of dealing controls usage of trade.

474 (3) Subject to the provisions of Section
475 2A-208 on modification and waiver, course of
476 performance is relevant to show a waiver or
477 modification of any term inconsistent with the
478 course of performance.

479 SECTION 2A-208. MODIFICATION, RESCISSION AND
480 WAIVER.

481 (1) An agreement modifying a lease contract
482 needs no consideration to be binding.

483 (2) A signed lease agreement that excludes
484 modification or rescission except by a signed
485 writing may not be otherwise modified or
486 rescinded, but, except as between merchants, such
487 a requirement on a form supplied by a merchant
488 must be separately signed by the other party.

489 (3) Although an attempt at modification or
490 rescission does not satisfy the requirements of
491 subsection (2), it may operate as a waiver.

492 (4) A party who has made a waiver affecting
493 an executory portion of a lease contract may
494 retract the waiver by reasonable notification
495 received by the other party that strict
496 performance will be required of any term waived,
497 unless the retraction would be unjust in view of a

498 material change of position in reliance on the
499 waiver.

500 SECTION 2A-209. LESSEE UNDER FINANCE LEASE AS
501 BENEFICIARY OF SUPPLY CONTRACT.

502 (1) The benefit of a supplier's promises to
503 the lessor under the supply contract and of all
504 warranties, whether express or implied, including
505 those of any third party provided in connection
506 with or as part of the supply contract, extends to
507 the lessee to the extent of the lessee's leasehold
508 interest under a finance lease related to the
509 supply contract, but is subject to the terms of
510 the warranty and of the supply contract and all
511 defenses or claims arising therefrom.

512 (2) The extension of the benefit of a
513 supplier's promises and of warranties to the
514 lessee (Section 2A-209(1)) does not: (i) Modify
515 the rights and obligations of the parties to the
516 supply contract, whether arising therefrom or
517 otherwise, or (ii) impose any duty or liability
518 under the supply contract on the lessee.

519 (3) Any modification or rescission of the
520 supply contract by the supplier and the lessor is
521 effective between the supplier and the lessee
522 unless, before the modification or rescission, the
523 supplier has received notice that the lessee has
524 entered into a finance lease related to the supply
525 contract. If the modification or rescission is
526 effective between the supplier and the lessee, the
527 lessor is deemed to have assumed, in addition to
528 the obligations of the lessor to the lessee under
529 the lease contract, promises of the supplier to
530 the lessor and warranties that were so modified or
531 rescinded as they existed and were available to
532 the lessee before modification or rescission.

533 (4) In addition to the extension of the
534 benefit of the supplier's promises and of
535 warranties to the lessee under subsection (1), the
536 lessee retains all rights that the lessee may have
537 against the supplier which arise from an agreement
538 between the lessee and the supplier or under other
539 law.

540 SECTION 2A-210. EXPRESS WARRANTIES.

541 (1) Express warranties by the lessor are
542 created as follows:

543 (a) Any affirmation of fact or promise made
544 by the lessor to the lessee which relates to the
545 goods and becomes part of the basis of the bargain

546 creates an express warranty that the goods will
547 conform to the affirmation or promise.

548 (b) Any description of the goods which is
549 made part of the basis of the bargain creates an
550 express warranty that the goods will conform to
551 the description.

552 (c) Any sample or model that is made part of
553 the basis of the bargain creates an express
554 warranty that the whole of the goods will conform
555 to the sample or model.

556 (2) It is not necessary to the creation of an
557 express warranty that the lessor use formal words,
558 such as "warrant" or "guarantee", or that the
559 lessor have a specific intention to make a
560 warranty, but an affirmation merely of the value
561 of the goods or a statement purporting to be
562 merely the lessor's opinion or commendation of the
563 goods does not create a warranty.

564 SECTION 2A-211. WARRANTIES AGAINST
565 INTERFERENCE AND AGAINST INFRINGEMENT; LESSEE'S
566 OBLIGATION AGAINST INFRINGEMENT.

567 (1) There is in a lease contract a warranty
568 that for the lease term no person holds a claim to
569 or interest in the goods that arose from an act or
570 omission of the lessor, other than a claim by way
571 of infringement or the like, which will interfere
572 with the lessee's enjoyment of its leasehold
573 interest.

574 (2) Except in a finance lease, there is in a
575 lease contract by a lessor who is a merchant
576 regularly dealing in goods of the kind a warranty
577 that the goods are delivered free of the rightful
578 claim of any person by way of infringement or the
579 like.

580 (3) A lessee who furnishes specifications to
581 a lessor or a supplier shall hold the lessor and
582 the supplier harmless against any claim by way of
583 infringement or the like that arises out of
584 compliance with the specifications.

585 SECTION 2A-212. IMPLIED WARRANTY OF
586 MERCHANTABILITY.

587 (1) Except in a finance lease, a warranty
588 that the goods will be merchantable is implied in
589 a lease contract if the lessor is a merchant with
590 respect to goods of that kind.

591 (2) Goods to be merchantable must be at least
592 such as:

593 (a) Pass without objection in the trade under
594 the description in the lease agreement;

595 (b) In the case of fungible goods, are of
596 fair average quality within the description;

597 (c) Are fit for the ordinary purposes for
598 which goods of that type are used;

599 (d) Run, within the variation permitted by
600 the lease agreement, of even kind, quality, and
601 quantity within each unit and among all units
602 involved;

603 (e) Are adequately contained, packaged, and
604 labeled as the lease agreement may require; and

605 (f) Conform to any promises or affirmations
606 of fact made on the container or label.

607 (3) Other implied warranties may arise from
608 course of dealing or usage of trade.

609 SECTION 2A-213. IMPLIED WARRANTY OF FITNESS
610 FOR PARTICULAR PURPOSE.

611 Except in a finance lease, if the lessor at
612 the time the lease contract is made has reason to
613 know of any particular purpose for which the goods
614 are required and that the lessee is relying on the
615 lessor's skill or judgment to select or furnish
616 suitable goods, there is in the lease contract an
617 implied warranty that the goods will be fit for
618 that purpose.

619 SECTION 2A-214. EXCLUSION OR MODIFICATION OF
620 WARRANTIES.

621 (1) Words or conduct relevant to the creation
622 of an express warranty and words or conduct
623 tending to negate or limit a warranty must be
624 construed wherever reasonable as consistent with
625 each other; but, subject to the provisions of
626 Section 2A-202 on parol or extrinsic evidence,
627 negation or limitation is inoperative to the
628 extent that the construction is unreasonable.

629 (2) Subject to subsection (3), to exclude or
630 modify the implied warranty of merchantability or
631 any part of it the language must mention
632 "merchantability", be by a writing, and be
633 conspicuous. Subject to subsection (3), to exclude
634 or modify any implied warranty of fitness the
635 exclusion must be by a writing and be conspicuous.
636 Language to exclude all implied warranties of
637 fitness is sufficient if it is in writing, is
638 conspicuous and states, for example, "There is no
639 warranty that the goods will be fit for a
640 particular purpose."

641 (3) Notwithstanding subsection (2), but
642 subject to subsection (4):

643 (a) Unless the circumstances indicate
644 otherwise, all implied warranties are excluded by
645 expressions like "as is", or "with all faults", or
646 by other language that in common understanding
647 calls the lessee's attention to the exclusion of
648 warranties and makes plain that there is no
649 implied warranty, if in writing and conspicuous;

650 (b) If the lessee before entering into the
651 lease contract has examined the goods or the
652 sample or model as fully as desired or has refused
653 to examine the goods, there is no implied warranty
654 with regard to defects that an examination ought
655 in the circumstances to have revealed; and

656 (c) An implied warranty may also be excluded
657 or modified by course of dealing, course of
658 performance, or usage of trade.

659 (4) To exclude or modify a warranty against
660 interference or against infringement (Section
661 2A-211) or any part of it, the language must be
662 specific, be by a writing, and be conspicuous,
663 unless the circumstances, including course of
664 performance, course of dealing, or usage of trade,
665 give the lessee reason to know that the goods are
666 being leased subject to a claim or interest of any
667 person.

668 SECTION 2A-215. CUMULATION AND CONFLICT OF
669 WARRANTIES EXPRESS OR IMPLIED.

670 Warranties, whether express or implied, must
671 be construed as consistent with each other and as
672 cumulative, but if that construction is
673 unreasonable, the intention of the parties
674 determines which warranty is dominant. In
675 ascertaining that intention the following rules
676 apply:

677 (a) Exact or technical specifications
678 displace an inconsistent sample or model or
679 general language of description.

680 (b) A sample from an existing bulk displaces
681 inconsistent general language of description.

682 (c) Express warranties displace inconsistent
683 implied warranties other than an implied warranty
684 of fitness for a particular purpose.

685 SECTION 2A-216. THIRD-PARTY BENEFICIARIES OF
686 EXPRESS AND IMPLIED WARRANTIES.

687 A warranty to or for the benefit of a lessee
688 under this article, whether express or implied,

689 extends to any person who may reasonably be
690 expected to use, consume, or be affected by the
691 goods and who is injured by breach of the
692 warranty. The operation of this section may not be
693 excluded, modified, or limited with respect to
694 injury to the person of an individual to whom the
695 warranty extends, but an exclusion, modification,
696 or limitation of the warranty, including any with
697 respect to rights and remedies, effective against
698 the lessee is also effective against the
699 beneficiary designated under this section.

700 SECTION 2A-217. IDENTIFICATION.

701 Identification of goods as goods to which a
702 lease contract refers may be made at any time and
703 in any manner explicitly agreed to by the parties.
704 In the absence of explicit agreement,
705 identification occurs:

706 (a) When the lease contract is made if the
707 lease contract is for a lease of goods that are
708 existing and identified;

709 (b) When the goods are shipped, marked, or
710 otherwise designated by the lessor as goods to
711 which the lease contract refers, if the lease
712 contract is for a lease of goods that are not
713 existing and identified; or

714 (c) When the young are conceived, if the
715 lease contract is for a lease of unborn young of
716 animals.

717 SECTION 2A-218. INSURANCE AND PROCEEDS.

718 (1) A lessee obtains an insurable interest
719 when existing goods are identified to the lease
720 contract even though the goods identified are
721 nonconforming and the lessee has an option to
722 reject them.

723 (2) If a lessee has an insurable interest
724 only by reason of the lessor's identification of
725 the goods, the lessor, until default or insolvency
726 or notification to the lessee that identification
727 is final, may substitute other goods for those
728 identified.

729 (3) Notwithstanding a lessee's insurable
730 interest under subsections (1) and (2), the lessor
731 retains an insurable interest until an option to
732 buy has been exercised by the lessee and risk of
733 loss has passed to the lessee.

734 (4) Nothing in this section impairs any
735 insurable interest recognized under any other
736 statute or rule of law.

737 (5) The parties by agreement may determine
738 that one or more parties have an obligation to
739 obtain and pay for insurance covering the goods
740 and by agreement may determine the beneficiary of
741 the proceeds of the insurance.

742 SECTION 2A-219. RISK OF LOSS.

743 (1) Except in the case of a finance lease,
744 risk of loss is retained by the lessor and does
745 not pass to the lessee. In the case of a finance
746 lease, risk of loss passes to the lessee.

747 (2) Subject to the provisions of this article
748 on the effect of default on risk of loss (Section
749 2A-220), if risk of loss is to pass to the lessee
750 and the time of passage is not stated, the
751 following rules apply:

752 (a) If the lease contract requires or
753 authorizes the goods to be shipped by carrier (i)
754 and it does not require delivery at a particular
755 destination, the risk of loss passes to the lessee
756 when the goods are duly delivered to the carrier;
757 but (ii) if it does require delivery at a
758 particular destination and the goods are there
759 duly tendered while in the possession of the
760 carrier, the risk of loss passes to the lessee
761 when the goods are there duly so tendered as to
762 enable the lessee to take delivery.

763 (b) If the goods are held by a bailee to be
764 delivered without being moved, the risk of loss
765 passes to the lessee on acknowledgment by the
766 bailee of the lessee's right to possession of the
767 goods.

768 (c) In any case not within subsection (a) or
769 (b), the risk of loss passes to the lessee on the
770 lessee's receipt of the goods if the lessor, or,
771 in the case of a finance lease, the supplier, is a
772 merchant; otherwise the risk passes to the lessee
773 on tender of delivery.

774 SECTION 2A-220. EFFECT OF DEFAULT ON RISK OF
775 LOSS.

776 (1) Where risk of loss is to pass to the
777 lessee and the time of passage is not stated:

778 (a) If a tender or delivery of goods so fails
779 to conform to the lease contract as to give a
780 right of rejection, the risk of their loss remains
781 with the lessor, or, in the case of a finance
782 lease, the supplier, until cure or acceptance.

783 (b) If the lessee rightfully revokes
784 acceptance, he, to the extent of any deficiency in

785 his effective insurance coverage, may treat the
786 risk of loss as having remained with the lessor
787 from the beginning.

788 (2) Whether or not risk of loss is to pass to
789 the lessee, if the lessee as to conforming goods
790 already identified to a lease contract repudiates
791 or is otherwise in default under the lease
792 contract, the lessor, or, in the case of a finance
793 lease, the supplier, to the extent of any
794 deficiency in his effective insurance coverage may
795 treat the risk of loss as resting on the lessee
796 for a commercially reasonable time.

797 SECTION 2A-221. CASUALTY TO IDENTIFIED GOODS.

798 If a lease contract requires goods identified
799 when the lease contract is made, and the goods
800 suffer casualty without fault of the lessee, the
801 lessor or the supplier before delivery, or the
802 goods suffer casualty before risk of loss passes
803 to the lessee pursuant to the lease agreement or
804 Section 2A-219, then:

805 (a) If the loss is total, the lease contract
806 is avoided; and

807 (b) If the loss is partial or the goods have
808 so deteriorated as to no longer conform to the
809 lease contract, the lessee may nevertheless demand
810 inspection and at his option either treat the
811 lease contract as avoided or, except in a finance
812 lease that is not a consumer lease, accept the
813 goods with due allowance from the rent payable for
814 the balance of the lease term for the
815 deterioration or the deficiency in quantity but
816 without further right against the lessor.

817 PART 3. EFFECT OF LEASE CONTRACT

818 SECTION 2A-301. ENFORCEABILITY OF LEASE
819 CONTRACT.

820 Except as otherwise provided in this article,
821 a lease contract is effective and enforceable
822 according to its terms between the parties,
823 against purchasers of the goods and against
824 creditors of the parties.

825 SECTION 2A-302. TITLE TO AND POSSESSION OF
826 GOODS.

827 Except as otherwise provided in this article,
828 each provision of this article applies whether the
829 lessor or a third party has title to the goods,
830 and whether the lessor, the lessee, or a third
831 party has possession of the goods, notwithstanding

832 any statute or rule of law that possession or the
833 absence of possession is fraudulent.

834 SECTION 2A-303. ALIENABILITY OF PARTY'S
835 INTEREST UNDER LEASE CONTRACT OR OF LESSOR'S
836 RESIDUAL INTEREST IN GOODS; DELEGATION OF
837 PERFORMANCE; TRANSFER OF RIGHTS.

838 (1) As used in this section, "creation of a
839 security interest" includes the sale of a lease
840 contract that is subject to article 9 on Secured
841 Transactions, by reason of Section 9-102(1)(b).

842 (2) Except as provided in subsections (3) and
843 (4), a provision in a lease agreement which (i)
844 prohibits the voluntary or involuntary transfer,
845 including a transfer by sale, sublease, creation
846 or enforcement of a security interest, or
847 attachment, levy, or other judicial process, of an
848 interest of a party under the lease contract or of
849 the lessor's residual interest in the goods, or
850 (ii) makes such a transfer an event of default,
851 gives rise to the rights and remedies provided in
852 subsection (5), but a transfer that is prohibited
853 or is an event of default under the lease
854 agreement is otherwise effective.

855 (3) A provision in a lease agreement which
856 (i) prohibits the creation or enforcement of a
857 security interest in an interest of a party under
858 the lease contract or in the lessor's residual
859 interest in the goods, or (ii) makes such a
860 transfer an event of default, is not enforceable
861 unless, and then only to the extent that, there is
862 an actual transfer by the lessee of the lessee's
863 right of possession or use of the goods in
864 violation of the provision or an actual delegation
865 of a material performance of either party to the
866 lease contract in violation of the provision.
867 Neither the granting nor the enforcement of a
868 security interest in (i) the lessor's interest
869 under the lease contract or (ii) the lessor's
870 residual interest in the goods is a transfer that
871 materially impairs the prospect of obtaining
872 return performance by, materially changes the duty
873 of, or materially increases the burden or risk
874 imposed on, the lessee within the purview of
875 subsection (5) unless, and then only to the extent
876 that, there is an actual delegation of a material
877 performance of the lessor.

878 (4) A provision in a lease agreement which
879 (i) prohibits a transfer of a right to damages for

880 default with respect to the whole lease contract
881 or of a right to payment arising out of the
882 transferor's due performance of the transferor's
883 entire obligation, or (ii) makes such a transfer
884 an event of default, is not enforceable, and such
885 a transfer is not a transfer that materially
886 impairs the prospect of obtaining return
887 performance by, materially changes the duty of, or
888 materially increases the burden or risk imposed
889 on, the other party to the lease contract within
890 the purview of subsection (5).

891 (5) Subject to subsections (3) and (4):

892 (a) If a transfer is made which is made an
893 event of default under a lease agreement, the
894 party to the lease contract not making the
895 transfer, unless that party waives the default or
896 otherwise agrees, has the rights and remedies
897 described in Section 2A-501(2);

898 (b) If paragraph (a) is not applicable and if
899 a transfer is made that (i) is prohibited under a
900 lease agreement or (ii) materially impairs the
901 prospect of obtaining return performance by,
902 materially changes the duty of, or materially
903 increases the burden or risk imposed on, the other
904 party to the lease contract, unless the party not
905 making the transfer agrees at any time to the
906 transfer in the lease contract or otherwise, then,
907 except as limited by contract, (i) the transferor
908 is liable to the party not making the transfer for
909 damages caused by the transfer to the extent that
910 the damages could not reasonably be prevented by
911 the party not making the transfer and (ii) a court
912 having jurisdiction may grant other appropriate
913 relief, including cancellation of the lease
914 contract or an injunction against the transfer.

915 (6) A transfer of "the lease" or of "all my
916 rights under the lease", or a transfer in similar
917 general terms, is a transfer of rights, and,
918 unless the language or the circumstances, as in a
919 transfer for security, indicate the contrary, the
920 transfer is a delegation of duties by the
921 transferor to the transferee. Acceptance by the
922 transferee constitutes a promise by the transferee
923 to perform those duties. The promise is
924 enforceable by either the transferor or the other
925 party to the lease contract.

926 (7) Unless otherwise agreed by the lessor and
927 the lessee, a delegation of performance does not

928 relieve the transferor as against the other party
929 of any duty to perform or of any liability for
930 default.

931 (8) In a consumer lease, to prohibit the
932 transfer of an interest of a party under the lease
933 contract or to make a transfer an event of
934 default, the language must be specific, by a
935 writing, and conspicuous.

936 SECTION 2A-304. SUBSEQUENT LEASE OF GOODS BY
937 LESSOR.

938 (1) Subject to Section 2A-303, a subsequent
939 lessee from a lessor of goods under an existing
940 lease contract obtains, to the extent of the
941 leasehold interest transferred, the leasehold
942 interest in the goods that the lessor had or had
943 power to transfer, and except as provided in
944 subsection (2) and Section 2A-527(4), takes
945 subject to the existing lease contract. A lessor
946 with voidable title has power to transfer a good
947 leasehold interest to a good faith subsequent
948 lessee for value, but only to the extent set forth
949 in the preceding sentence. If goods have been
950 delivered under a transaction of purchase, the
951 lessor has that power even though:

952 (a) The lessor's transferor was deceived as
953 to the identity of the lessor;

954 (b) The delivery was in exchange for a check
955 which is later dishonored;

956 (c) It was agreed that the transaction was to
957 be a "cash sale"; or

958 (d) The delivery was procured through fraud
959 punishable as larcenous under the criminal law.

960 (2) A subsequent lessee in the ordinary
961 course of business from a lessor who is a merchant
962 dealing in goods of that kind to whom the goods
963 were entrusted by the existing lessee of that
964 lessor before the interest of the subsequent
965 lessee became enforceable against that lessor
966 obtains, to the extent of the leasehold interest
967 transferred, all of that lessor's and the existing
968 lessee's rights to the goods, and takes free of
969 the existing lease contract.

970 (3) A subsequent lessee from the lessor of
971 goods that are subject to an existing lease
972 contract and are covered by a certificate of title
973 issued under a statute of this state or of another
974 jurisdiction takes no greater rights than those

975 provided both by this section and by the
976 certificate of title statute.

977 SECTION 2A-305. SALE OR SUBLEASE OF GOODS BY
978 LESSEE.

979 (1) Subject to the provisions of Section
980 2A-303, a buyer or sublessee from the lessee of
981 goods under an existing lease contract obtains, to
982 the extent of the interest transferred, the
983 leasehold interest in the goods that the lessee
984 had or had power to transfer, and except as
985 provided in subsection (2) and Section 2A-511(4),
986 takes subject to the existing lease contract. A
987 lessee with a voidable leasehold interest has
988 power to transfer a good leasehold interest to a
989 good faith buyer for value or a good faith
990 sublessee for value, but only to the extent set
991 forth in the preceding sentence. When goods have
992 been delivered under a transaction of lease the
993 lessee has that power even though:

994 (a) The lessor was deceived as to the
995 identity of the lessee;

996 (b) The delivery was in exchange for a check
997 which is later dishonored; or

998 (c) The delivery was procured through fraud
999 punishable as larcenous under the criminal law.

1000 (2) A buyer in the ordinary course of
1001 business or a sublessee in the ordinary course of
1002 business from a lessee who is a merchant dealing
1003 in goods of that kind to whom the goods were
1004 entrusted by the lessor obtains, to the extent of
1005 the interest transferred, all of the lessor's and
1006 lessee's rights to the goods, and takes free of
1007 the existing lease contract.

1008 (3) A buyer or sublessee from the lessee of
1009 goods that are subject to an existing lease
1010 contract and are covered by a certificate of title
1011 issued under a statute of this state or of another
1012 jurisdiction takes no greater rights than those
1013 provided both by this section and by the
1014 certificate of title statute.

1015 SECTION 2A-306. PRIORITY OF CERTAIN LIENS
1016 ARISING BY OPERATION OF LAW.

1017 If a person in the ordinary course of his
1018 business furnishes services or materials with
1019 respect to goods subject to a lease contract, a
1020 lien upon those goods in the possession of that
1021 person given by statute or rule of law for those
1022 materials or services takes priority over any

1023 interest of the lessor or lessee under the lease
1024 contract or this article unless the lien is
1025 created by statute and the statute provides
1026 otherwise or unless the lien is created by rule of
1027 law and the rule of law provides otherwise.

1028 SECTION 2A-307. PRIORITY OF LIENS ARISING BY
1029 ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN, AND
1030 OTHER CLAIMS TO GOODS.

1031 (1) Except as otherwise provided in Section
1032 2A-306, a creditor of a lessee takes subject to
1033 the lease contract.

1034 (2) Except as otherwise provided in
1035 subsections (3) and (4) and in Sections 2A-306 and
1036 2A-308, a creditor of a lessor takes subject to
1037 the lease contract unless:

1038 (a) The creditor holds a lien that attached
1039 to the goods before the lease contract became
1040 enforceable; or

1041 (b) The creditor holds a security interest in
1042 the goods and the lessee did not give value and
1043 receive delivery of the goods without knowledge of
1044 the security interest; or

1045 (c) The creditor holds a security interest in
1046 the goods which was perfected (Section 9-303)
1047 before the lease contract became enforceable.

1048 (3) A lessee in the ordinary course of
1049 business takes the leasehold interest free of a
1050 security interest in the goods created by the
1051 lessor even though the security interest is
1052 perfected (Section 9-303) and the lessee knows of
1053 its existence.

1054 (4) A lessee other than a lessee in the
1055 ordinary course of business takes the leasehold
1056 interest free of a security interest to the extent
1057 that it secures future advances made after the
1058 secured party acquires knowledge of the lease or
1059 more than forty-five days after the lease contract
1060 becomes enforceable, whichever first occurs,
1061 unless the future advances are made pursuant to a
1062 commitment entered into without knowledge of the
1063 lease and before the expiration of the forty-five
1064 day period.

1065 SECTION 2A-308. SPECIAL RIGHTS OF CREDITORS.

1066 (1) A creditor of a lessor in possession of
1067 goods subject to a lease contract may treat the
1068 lease contract as void if as against the creditor
1069 retention of possession by the lessor is
1070 fraudulent under any statute or rule of law, but

1071 retention of possession in good faith and current
1072 course of trade by the lessor for a commercially
1073 reasonable time after the lease contract becomes
1074 enforceable is not fraudulent.

1075 (2) Nothing in this article impairs the
1076 rights of creditors of a lessor if the lease
1077 contract (a) becomes enforceable, not in current
1078 course of trade but in satisfaction of or as
1079 security for a pre-existing claim for money,
1080 security, or the like, and (b) is made under
1081 circumstances which under any statute or rule of
1082 law apart from this article would constitute the
1083 transaction a fraudulent transfer or voidable
1084 preference.

1085 (3) A creditor of a seller may treat a sale
1086 or an identification of goods to a contract for
1087 sale as void if as against the creditor retention
1088 of possession by the seller is fraudulent under
1089 any statute or rule of law, but retention of
1090 possession of the goods pursuant to a lease
1091 contract entered into by the seller as lessee and
1092 the buyer as lessor in connection with the sale or
1093 identification of the goods is not fraudulent if
1094 the buyer bought for value and in good faith.

1095 SECTION 2A-309. LESSOR'S AND LESSEE'S RIGHTS
1096 WHEN GOODS BECOME FIXTURES.

1097 (1) In this section:

1098 (a) Goods are "fixtures" when they become so
1099 related to particular real estate that an interest
1100 in them arises under real estate law;

1101 (b) A "fixture filing" is the filing, in the
1102 office where a mortgage on the real estate would
1103 be filed or recorded, of a financing statement
1104 covering goods that are or are to become fixtures
1105 and conforming to the requirements of Section
1106 9-402(5);

1107 (c) A lease is a "purchase money lease"
1108 unless the lessee has possession or use of the
1109 goods or the right to possession or use of the
1110 goods before the lease agreement is enforceable;

1111 (d) A mortgage is a "construction mortgage"
1112 to the extent it secures an obligation incurred
1113 for the construction of an improvement on land
1114 including the acquisition cost of the land, if the
1115 recorded writing so indicates; and

1116 (e) "Encumbrance" includes real estate
1117 mortgages and other liens on real estate and all

1118 other rights in real estate that are not ownership
1119 interests.

1120 (2) Under this article a lease may be of
1121 goods that are fixtures or may continue in goods
1122 that become fixtures, but no lease exists under
1123 this article of ordinary building materials
1124 incorporated into an improvement on land.

1125 (3) This article does not prevent creation of
1126 a lease of fixtures pursuant to real estate law.

1127 (4) The perfected interest of a lessor of
1128 fixtures has priority over a conflicting interest
1129 of an encumbrancer or owner of the real estate if:

1130 (a) The lease is a purchase money lease, the
1131 conflicting interest of the encumbrancer or owner
1132 arises before the goods become fixtures, the
1133 interest of the lessor is perfected by a fixture
1134 filing before the goods become fixtures or within
1135 ten days thereafter, and the lessee has an
1136 interest of record in the real estate or is in
1137 possession of the real estate; or

1138 (b) The interest of the lessor is perfected
1139 by a fixture filing before the interest of the
1140 encumbrancer or owner is of record, the lessor's
1141 interest has priority over any conflicting
1142 interest of a predecessor in title of the
1143 encumbrancer or owner, and the lessee has an
1144 interest of record in the real estate or is in
1145 possession of the real estate.

1146 (5) The interest of a lessor of fixtures,
1147 whether or not perfected, has priority over the
1148 conflicting interest of an encumbrancer or owner
1149 of the real estate if:

1150 (a) The fixtures are readily removable
1151 factory or office machines, readily removable
1152 equipment that is not primarily used or leased for
1153 use in the operation of the real estate, or
1154 readily removable replacements of domestic
1155 appliances that are goods subject to a consumer
1156 lease, and before the goods become fixtures the
1157 lease contract is enforceable; or

1158 (b) The conflicting interest is a lien on the
1159 real estate obtained by legal or equitable
1160 proceedings after the lease contract is
1161 enforceable; or

1162 (c) The encumbrancer or owner has consented
1163 in writing to the lease or has disclaimed an
1164 interest in the goods as fixtures; or

1165 (d) The lessee has a right to remove the
1166 goods as against the encumbrancer or owner. If the
1167 lessee's right to remove terminates, the priority
1168 of the interest of the lessor continues for a
1169 reasonable time.

1170 (6) Notwithstanding subsection (4)(a) but
1171 otherwise subject to subsections (4) and (5), the
1172 interest of a lessor of fixtures, including the
1173 lessor's residual interest, is subordinate to the
1174 conflicting interest of an encumbrancer of the
1175 real estate under a construction mortgage recorded
1176 before the goods become fixtures if the goods
1177 become fixtures before the completion of the
1178 construction. To the extent given to refinance a
1179 construction mortgage, the conflicting interest of
1180 an encumbrancer of the real estate under a
1181 mortgage has this priority to the same extent as
1182 the encumbrancer of the real estate under the
1183 construction mortgage.

1184 (7) In cases not within the preceding
1185 subsections, priority between the interest of a
1186 lessor of fixtures, including the lessor's
1187 residual interest, and the conflicting interest of
1188 an encumbrancer or owner of the real estate who is
1189 not the lessee is determined by the priority rules
1190 governing conflicting interests in real estate.

1191 (8) If the interest of a lessor of fixtures,
1192 including the lessor's residual interest, has
1193 priority over all conflicting interests of all
1194 owners and encumbrancers of the real estate, the
1195 lessor or the lessee may (i) on default,
1196 expiration, termination, or cancellation of the
1197 lease agreement but subject to the lease agreement
1198 and this article, or (ii) if necessary to enforce
1199 other rights and remedies of the lessor or lessee
1200 under this article, remove the goods from the real
1201 estate, free and clear of all conflicting
1202 interests of all owners and encumbrancers of the
1203 real estate, but the lessor or lessee must
1204 reimburse any encumbrancer or owner of the real
1205 estate who is not the lessee and who has not
1206 otherwise agreed for the cost of repair of any
1207 physical injury, but not for any diminution in
1208 value of the real estate caused by the absence of
1209 the goods removed or by any necessity of replacing
1210 them. A person entitled to reimbursement may
1211 refuse permission to remove until the party

1212 seeking removal gives adequate security for the
1213 performance of this obligation.

1214 (9) Even though the lease agreement does not
1215 create a security interest, the interest of a
1216 lessor of fixtures, including the lessor's
1217 residual interest, is perfected by filing a
1218 financing statement as a fixture filing for leased
1219 goods that are or are to become fixtures in
1220 accordance with the relevant provisions of article
1221 9 on Secured Transactions.

1222 SECTION 2A-310. LESSOR'S AND LESSEE'S RIGHTS
1223 WHEN GOODS BECOME ACCESSIONS.

1224 (1) Goods are "accessions" when they are
1225 installed in or affixed to other goods.

1226 (2) The interest of a lessor or a lessee
1227 under a lease contract entered into before the
1228 goods became accessions is superior to all
1229 interests in the whole except as stated in
1230 subsection (4).

1231 (3) The interest of a lessor or a lessee
1232 under a lease contract entered into at the time or
1233 after the goods became accessions is superior to
1234 all subsequently acquired interests in the whole
1235 except as stated in subsection (4) but is
1236 subordinate to interests in the whole existing at
1237 the time the lease contract was made unless the
1238 holders of such interests in the whole have in
1239 writing consented to the lease or disclaimed an
1240 interest in the goods as part of the whole.

1241 (4) The interest of a lessor or a lessee
1242 under a lease contract described in subsection (2)
1243 or (3) is subordinate to the interest of (a) a
1244 buyer in the ordinary course of business or a
1245 lessee in the ordinary course of business of any
1246 interest in the whole acquired after the goods
1247 became accessions; or (b) a creditor with a
1248 security interest in the whole perfected before
1249 the lease contract was made to the extent that the
1250 creditor makes subsequent advances without
1251 knowledge of the lease contract.

1252 (5) When under subsections (2) or (3) and (4)
1253 a lessor or a lessee of accessions holds an
1254 interest that is superior to all interests in the
1255 whole, the lessor or the lessee may (a) on
1256 default, expiration, termination, or cancellation
1257 of the lease contract by the other party but
1258 subject to the provisions of the lease contract
1259 and this article, or (b) if necessary to enforce

1260 his other rights and remedies under this article,
1261 remove the goods from the whole, free and clear of
1262 all interests in the whole, but he must reimburse
1263 any holder of an interest in the whole who is not
1264 the lessee and who has not otherwise agreed for
1265 the cost of repair of any physical injury but not
1266 for any diminution in value of the whole caused by
1267 the absence of the goods removed or by any
1268 necessity for replacing them. A person entitled to
1269 reimbursement may refuse permission to remove
1270 until the party seeking removal gives adequate
1271 security for the performance of this obligation.

1272 SECTION 2A-311. PRIORITY SUBJECT TO
1273 SUBORDINATION.

1274 Nothing in this article prevents
1275 subordination by agreement by any person entitled
1276 to priority.

1277 PART 4. PERFORMANCE OF LEASE CONTRACT:

1278 REPUDIATED, SUBSTITUTED AND EXCUSED

1279 SECTION 2A-401. INSECURITY: ADEQUATE
1280 ASSURANCE OF PERFORMANCE.

1281 (1) A lease contract imposes an obligation on
1282 each party that the other's expectation of
1283 receiving due performance will not be impaired.

1284 (2) If reasonable grounds for insecurity
1285 arise with respect to the performance of either
1286 party, the insecure party may demand in writing
1287 adequate assurance of due performance. Until the
1288 insecure party receives that assurance, if
1289 commercially reasonable the insecure party may
1290 suspend any performance for which he has not
1291 already received the agreed return.

1292 (3) A repudiation of the lease contract
1293 occurs if assurance of due performance adequate
1294 under the circumstances of the particular case is
1295 not provided to the insecure party within a
1296 reasonable time, not to exceed thirty days after
1297 receipt of a demand by the other party.

1298 (4) Between merchants, the reasonableness of
1299 grounds for insecurity and the adequacy of any
1300 assurance offered must be determined according to
1301 commercial standards.

1302 (5) Acceptance of any nonconforming delivery
1303 or payment does not prejudice the aggrieved
1304 party's right to demand adequate assurance of
1305 future performance.

1306 SECTION 2A-402. ANTICIPATORY REPUDIATION.

1307 If either party repudiates a lease contract
1308 with respect to a performance not yet due under
1309 the lease contract, the loss of which performance
1310 will substantially impair the value of the lease
1311 contract to the other, the aggrieved party may:

1312 (a) For a commercially reasonable time, await
1313 retraction of repudiation and performance by the
1314 repudiating party;

1315 (b) Make demand pursuant to Section 2A-401
1316 and await assurance of future performance adequate
1317 under the circumstances of the particular case; or

1318 (c) Resort to any right or remedy upon
1319 default under the lease contract or this article,
1320 even though the aggrieved party has notified the
1321 repudiating party that the aggrieved party would
1322 await the repudiating party's performance and
1323 assurance and has urged retraction. In addition,
1324 whether or not the aggrieved party is pursuing one
1325 of the foregoing remedies, the aggrieved party may
1326 suspend performance or, if the aggrieved party is
1327 the lessor, proceed in accordance with the
1328 provisions of this article on the lessor's right
1329 to identify goods to the lease contract
1330 notwithstanding default or to salvage unfinished
1331 goods (Section 2A-524).

1332 SECTION 2A-403. RETRACTION OF ANTICIPATORY
1333 REPUDIATION.

1334 (1) Until the repudiating party's next
1335 performance is due, the repudiating party can
1336 retract the repudiation unless, since the
1337 repudiation, the aggrieved party has cancelled the
1338 lease contract or materially changed the aggrieved
1339 party's position or otherwise indicated that the
1340 aggrieved party considers the repudiation final.

1341 (2) Retraction may be by any method that
1342 clearly indicates to the aggrieved party that the
1343 repudiating party intends to perform under the
1344 lease contract and includes any assurance demanded
1345 under Section 2A-401.

1346 (3) Retraction reinstates a repudiating
1347 party's rights under a lease contract with due
1348 excuse and allowance to the aggrieved party for
1349 any delay occasioned by the repudiation.

1350 SECTION 2A-404. SUBSTITUTED PERFORMANCE.

1351 (1) If without fault of the lessee, the
1352 lessor and the supplier, the agreed berthing,
1353 loading, or unloading facilities fail or the
1354 agreed type of carrier becomes unavailable or the

1355 agreed manner of delivery otherwise becomes
1356 commercially impracticable, but a commercially
1357 reasonable substitute is available, the substitute
1358 performance must be tendered and accepted.

1359 (2) If the agreed means or manner of payment
1360 fails because of domestic or foreign governmental
1361 regulation:

1362 (a) The lessor may withhold or stop delivery
1363 or cause the supplier to withhold or stop delivery
1364 unless the lessee provides a means or manner of
1365 payment that is commercially a substantial
1366 equivalent; and

1367 (b) If delivery has already been taken,
1368 payment by the means or in the manner provided by
1369 the regulation discharges the lessee's obligation
1370 unless the regulation is discriminatory,
1371 oppressive, or predatory.

1372 SECTION 2A-405. EXCUSED PERFORMANCE.

1373 Subject to Section 2A-404 on substituted
1374 performance, the following rules apply:

1375 (a) Delay in delivery or nondelivery in whole
1376 or in part by a lessor or a supplier who complies
1377 with paragraphs (b) and (c) is not a default under
1378 the lease contract if performance as agreed has
1379 been made impracticable by the occurrence of a
1380 contingency the nonoccurrence of which was a basic
1381 assumption on which the lease contract was made or
1382 by compliance in good faith with any applicable
1383 foreign or domestic governmental regulation or
1384 order, whether or not the regulation or order
1385 later proves to be invalid.

1386 (b) If the causes mentioned in paragraph (a)
1387 affect only part of the lessor's or the supplier's
1388 capacity to perform, he shall allocate production
1389 and deliveries among his customers but at his
1390 option may include regular customers not then
1391 under contract for sale or lease as well as his
1392 own requirements for further manufacture. He may
1393 so allocate in any manner that is fair and
1394 reasonable.

1395 (c) The lessor seasonably shall notify the
1396 lessee and in the case of a finance lease the
1397 supplier seasonably shall notify the lessor and
1398 the lessee, if known, that there will be delay or
1399 nondelivery and, if allocation is required under
1400 paragraph (b), of the estimated quota thus made
1401 available for the lessee.

1402 SECTION 2A-406. PROCEDURE ON EXCUSED
1403 PERFORMANCE.

1404 (1) If the lessee receives notification of a
1405 material or indefinite delay or an allocation
1406 justified under Section 2A-405, the lessee may by
1407 written notification to the lessor as to any goods
1408 involved, and with respect to all of the goods if
1409 under an instalment lease contract the value of
1410 the whole lease contract is substantially impaired
1411 (Section 2A-510):

1412 (a) Terminate the lease contract (Section
1413 2A-505(2)); or

1414 (b) Except in a finance lease that is not a
1415 consumer lease, modify the lease contract by
1416 accepting the available quota in substitution,
1417 with due allowance from the rent payable for the
1418 balance of the lease term for the deficiency but
1419 without further right against the lessor.

1420 (2) If, after receipt of a notification from
1421 the lessor under Section 2A-405, the lessee fails
1422 so to modify the lease agreement within a
1423 reasonable time not exceeding thirty days, the
1424 lease contract lapses with respect to any
1425 deliveries affected.

1426 SECTION 2A-407. IRREVOCABLE PROMISES: FINANCE
1427 LEASES.

1428 (1) In the case of a finance lease that is
1429 not a consumer lease the lessee's promises under
1430 the lease contract become irrevocable and
1431 independent upon the lessee's acceptance of the
1432 goods.

1433 (2) A promise that has become irrevocable and
1434 independent under subsection (1):

1435 (a) Is effective and enforceable between the
1436 parties, and by or against third parties including
1437 assignees of the parties; and

1438 (b) Is not subject to cancellation,
1439 termination, modification, repudiation, excuse, or
1440 substitution without the consent of the party to
1441 whom the promise runs.

1442 (3) This section does not affect the validity
1443 under any other law of a covenant in any lease
1444 contract making the lessee's promises irrevocable
1445 and independent upon the lessee's acceptance of
1446 the goods.

1447 PART 5. DEFAULT

1448 A. IN GENERAL

1449 SECTION 2A-501. DEFAULT: PROCEDURE.

1450 (1) Whether the lessor or the lessee is in
1451 default under a lease contract is determined by
1452 the lease agreement and this article.

1453 (2) If the lessor or the lessee is in default
1454 under the lease contract, the party seeking
1455 enforcement has rights and remedies as provided in
1456 this article and, except as limited by this
1457 article, as provided in the lease agreement.

1458 (3) If the lessor or the lessee is in default
1459 under the lease contract, the party seeking
1460 enforcement may reduce the party's claim to
1461 judgment, or otherwise enforce the lease contract
1462 by self-help or any available judicial procedure
1463 or nonjudicial procedure, including administrative
1464 proceeding, arbitration, or the like, in
1465 accordance with this article.

1466 (4) Except as otherwise provided in Section
1467 1-106(1) or this article or the lease agreement,
1468 the rights and remedies referred to in subsections
1469 (2) and (3) are cumulative.

1470 (5) If the lease agreement covers both real
1471 property and goods, the party seeking enforcement
1472 may proceed under this part as to the goods, or
1473 under other applicable law as to both the real
1474 property and the goods in accordance with that
1475 party's rights and remedies in respect of the real
1476 property, in which case this part does not apply.

1477 SECTION 2A-502. NOTICE AFTER DEFAULT.

1478 Except as otherwise provided in this article
1479 or the lease agreement, the lessor or lessee in
1480 default under the lease contract is not entitled
1481 to notice of default or notice of enforcement from
1482 the other party to the lease agreement.

1483 SECTION 2A-503. MODIFICATION OR IMPAIRMENT OF
1484 RIGHTS AND REMEDIES.

1485 (1) Except as otherwise provided in this
1486 article, the lease agreement may include rights
1487 and remedies for default in addition to or in
1488 substitution for those provided in this article
1489 and may limit or alter the measure of damages
1490 recoverable under this article.

1491 (2) Resort to a remedy provided under this
1492 article or in the lease agreement is optional
1493 unless the remedy is expressly agreed to be
1494 exclusive. If circumstances cause an exclusive or
1495 limited remedy to fail of its essential purpose,
1496 or provision for an exclusive remedy is

1497 unconscionable, remedy may be had as provided in
1498 this article.

1499 (3) Consequential damages may be liquidated
1500 under Section 2A-504, or may otherwise be limited,
1501 altered, or excluded unless the limitation,
1502 alteration, or exclusion is unconscionable.
1503 Limitation, alteration, or exclusion of
1504 consequential damages for injury to the person in
1505 the case of consumer goods is prima facie
1506 unconscionable but limitation, alteration, or
1507 exclusion of damages where the loss is commercial
1508 is not prima facie unconscionable.

1509 (4) Rights and remedies on default by the
1510 lessor or the lessee with respect to any
1511 obligation or promise collateral or ancillary to
1512 the lease contract are not impaired by this
1513 article.

1514 SECTION 2A-504. LIQUIDATION OF DAMAGES.

1515 (1) Damages payable by either party for
1516 default, or any other act or omission, including
1517 indemnity for loss or diminution of anticipated
1518 tax benefits or loss or damage to lessor's
1519 residual interest, may be liquidated in the lease
1520 agreement but only at an amount or by a formula
1521 that is reasonable in light of the then
1522 anticipated harm caused by the default or other
1523 act or omission.

1524 (2) If the lease agreement provides for
1525 liquidation of damages, and such provision does
1526 not comply with subsection (1), or such provision
1527 is an exclusive or limited remedy that
1528 circumstances cause to fail of its essential
1529 purpose, remedy may be had as provided in this
1530 article.

1531 (3) If the lessor justifiably withholds or
1532 stops delivery of goods because of the lessee's
1533 default or insolvency (Section 2A-525 or 2A-526),
1534 the lessee is entitled to restitution of any
1535 amount by which the sum of his payments exceeds:

1536 (a) The amount to which the lessor is
1537 entitled by virtue of terms liquidating the
1538 lessor's damages in accordance with subsection
1539 (1); or

1540 (b) In the absence of those terms, twenty per
1541 cent of the then present value of the total rent
1542 the lessee was obligated to pay for the balance of
1543 the lease term, or, in the case of a consumer

1544 lease, the lesser of such amount or five hundred
1545 dollars.

1546 (4) A lessee's right to restitution under
1547 subsection (3) is subject to offset to the extent
1548 the lessor establishes:

1549 (a) A right to recover damages under the
1550 provisions of this article other than subsection
1551 (1); and

1552 (b) The amount or value of any benefits
1553 received by the lessee directly or indirectly by
1554 reason of the lease contract.

1555 SECTION 2A-505. CANCELLATION AND TERMINATION
1556 AND EFFECT OF CANCELLATION, TERMINATION,
1557 RESCISSION, OR FRAUD ON RIGHTS AND REMEDIES.

1558 (1) On cancellation of the lease contract,
1559 all obligations that are still executory on both
1560 sides are discharged, but any right based on prior
1561 default or performance survives, and the
1562 cancelling party also retains any remedy for
1563 default of the whole lease contract or any
1564 unperformed balance.

1565 (2) On termination of the lease contract, all
1566 obligations that are still executory on both sides
1567 are discharged but any right based on prior
1568 default or performance survives.

1569 (3) Unless the contrary intention clearly
1570 appears, expressions of "cancellation",
1571 "rescission", or the like of the lease contract
1572 may not be construed as a renunciation or
1573 discharge of any claim in damages for an
1574 antecedent default.

1575 (4) Rights and remedies for material
1576 misrepresentation or fraud include all rights and
1577 remedies available under this article for default.

1578 (5) Neither rescission nor a claim for
1579 rescission of the lease contract nor rejection or
1580 return of the goods may bar or be deemed
1581 inconsistent with a claim for damages or other
1582 right or remedy.

1583 SECTION 2A-506. STATUTE OF LIMITATIONS.

1584 (1) An action for default under a lease
1585 contract, including breach of warranty or
1586 indemnity, must be commenced within four years
1587 after the cause of action accrued. By the original
1588 lease contract the parties may reduce the period
1589 of limitation to not less than one year.

1590 (2) A cause of action for default accrues
1591 when the act or omission on which the default or

1592 breach of warranty is based is or should have been
1593 discovered by the aggrieved party, or when the
1594 default occurs, whichever is later. A cause of
1595 action for indemnity accrues when the act or
1596 omission on which the claim for indemnity is based
1597 is or should have been discovered by the
1598 indemnified party, whichever is later.

1599 (3) If an action commenced within the time
1600 limited by subsection (1) is so terminated as to
1601 leave available a remedy by another action for the
1602 same default or breach of warranty or indemnity,
1603 the other action may be commenced after the
1604 expiration of the time limited and within 6 months
1605 after the termination of the first action unless
1606 the termination resulted from voluntary
1607 discontinuance or from dismissal for failure or
1608 neglect to prosecute.

1609 (4) This section does not alter the law on
1610 tolling of the statute of limitations nor does it
1611 apply to causes of action that have accrued before
1612 the effective date of this act.

1613 SECTION 2A-507. PROOF OF MARKET RENT: TIME
1614 AND PLACE.

1615 (1) Damages based on market rent (Section
1616 2A-519 or 2A-528) are determined according to the
1617 rent for the use of the goods concerned for a
1618 lease term identical to the remaining lease term
1619 of the original lease agreement and prevailing at
1620 the times specified in Sections 2A-519 and 2A-528.

1621 (2) If evidence of rent for the use of the
1622 goods concerned for a lease term identical to the
1623 remaining lease term of the original lease
1624 agreement and prevailing at the times or places
1625 described in this article is not readily
1626 available, the rent prevailing within any
1627 reasonable time before or after the time described
1628 or at any other place or for a different lease
1629 term which in commercial judgment or under usage
1630 of trade would serve as a reasonable substitute
1631 for the one described may be used, making any
1632 proper allowance for the difference, including the
1633 cost of transporting the goods to or from the
1634 other place.

1635 (3) Evidence of a relevant rent prevailing at
1636 a time or place or for a lease term other than the
1637 one described in this article offered by one party
1638 is not admissible unless and until he has given

1639 the other party notice the court finds sufficient
1640 to prevent unfair surprise.

1641 (4) If the prevailing rent or value of any
1642 goods regularly leased in any established market
1643 is in issue, reports in official publications or
1644 trade journals or in newspapers or periodicals of
1645 general circulation published as the reports of
1646 that market are admissible in evidence. The
1647 circumstances of the preparation of the report may
1648 be shown to affect its weight but not its
1649 admissibility.

1650 B. DEFAULT BY LESSOR

1651 SECTION 2A-508. LESSEE'S REMEDIES.

1652 (1) If a lessor fails to deliver the goods in
1653 conformity to the lease contract (Section 2A-509)
1654 or repudiates the lease contract (Section 2A-402),
1655 or a lessee rightfully rejects the goods (Section
1656 2A-509) or justifiably revokes acceptance of the
1657 goods (Section 2A-517), then with respect to any
1658 goods involved, and with respect to all of the
1659 goods if under an instalment lease contract the
1660 value of the whole lease contract is substantially
1661 impaired (Section 2A-510), the lessor is in
1662 default under the lease contract and the lessee
1663 may:

1664 (a) Cancel the lease contract (Section
1665 2A-505(1));

1666 (b) Recover so much of the rent and security
1667 as has been paid and is just under the
1668 circumstances;

1669 (c) Cover and recover damages as to all goods
1670 affected whether or not they have been identified
1671 to the lease contract (Sections 2A-518 and
1672 2A-520), or recover damages for nondelivery
1673 (Sections 2A-519 and 2A-520);

1674 (d) Exercise any other rights or pursue any
1675 other remedies provided in the lease contract.

1676 (2) If a lessor fails to deliver the goods in
1677 conformity to the lease contract or repudiates the
1678 lease contract, the lessee may also:

1679 (a) If the goods have been identified,
1680 recover them (Section 2A-522); or

1681 (b) In a proper case, obtain specific
1682 performance or replevy the goods (Section 2A-521).

1683 (3) If a lessor is otherwise in default under
1684 a lease contract, the lessee may exercise the
1685 rights and pursue the remedies provided in the

1686 lease contract, which may include a right to
1687 cancel the lease, and in Section 2A-519(3).

1688 (4) If a lessor has breached a warranty,
1689 whether express or implied, the lessee may recover
1690 damages (Section 2A-519(4)).

1691 (5) On rightful rejection or justifiable
1692 revocation of acceptance, a lessee has a security
1693 interest in goods in the lessee's possession or
1694 control for any rent and security that has been
1695 paid and any expenses reasonably incurred in their
1696 inspection, receipt, transportation, and care and
1697 custody and may hold those goods and dispose of
1698 them in good faith and in a commercially
1699 reasonable manner, subject to Section 2A-527(5).

1700 (6) Subject to the provisions of Section
1701 2A-407, a lessee, on notifying the lessor of the
1702 lessee's intention to do so, may deduct all or any
1703 part of the damages resulting from any default
1704 under the lease contract from any part of the rent
1705 still due under the same lease contract.

1706 SECTION 2A-509. LESSEE'S RIGHTS ON IMPROPER
1707 DELIVERY; RIGHTFUL REJECTION.

1708 (1) Subject to the provisions of Section
1709 2A-510 on default in instalment lease contracts,
1710 if the goods or the tender or delivery fail in any
1711 respect to conform to the lease contract, the
1712 lessee may reject or accept the goods or accept
1713 any commercial unit or units and reject the rest
1714 of the goods.

1715 (2) Rejection of goods is ineffective unless
1716 it is within a reasonable time after tender or
1717 delivery of the goods and the lessee seasonably
1718 notifies the lessor.

1719 SECTION 2A-510. INSTALMENT LEASE CONTRACTS:
1720 REJECTION AND DEFAULT.

1721 (1) Under an instalment lease contract a
1722 lessee may reject any delivery that is
1723 nonconforming if the nonconformity substantially
1724 impairs the value of that delivery and cannot be
1725 cured or the nonconformity is a defect in the
1726 required documents; but if the nonconformity does
1727 not fall within subsection (2) and the lessor or
1728 the supplier gives adequate assurance of its cure,
1729 the lessee must accept that delivery.

1730 (2) Whenever nonconformity or default with
1731 respect to one or more deliveries substantially
1732 impairs the value of the instalment lease contract
1733 as a whole there is a default with respect to the

1734 whole. But, the aggrieved party reinstates the
1735 instalment lease contract as a whole if the
1736 aggrieved party accepts a nonconforming delivery
1737 without seasonably notifying of cancellation or
1738 brings an action with respect only to past
1739 deliveries or demands performance as to future
1740 deliveries.

1741 SECTION 2A-511. MERCHANT LESSEE'S DUTIES AS
1742 TO RIGHTFULLY REJECTED GOODS.

1743 (1) Subject to any security interest of a
1744 lessee (Section 2A-508(5)), if a lessor or a
1745 supplier has no agent or place of business at the
1746 market of rejection, a merchant lessee, after
1747 rejection of goods in his possession or control,
1748 shall follow any reasonable instructions received
1749 from the lessor or the supplier with respect to
1750 the goods. In the absence of those instructions, a
1751 merchant lessee shall make reasonable efforts to
1752 sell, lease, or otherwise dispose of the goods for
1753 the lessor's account if they threaten to decline
1754 in value speedily. Instructions are not reasonable
1755 if on demand indemnity for expenses is not
1756 forthcoming.

1757 (2) If a merchant lessee (subsection (1)) or
1758 any other lessee (Section 2A-512) disposes of
1759 goods, he is entitled to reimbursement either from
1760 the lessor or the supplier or out of the proceeds
1761 for reasonable expenses of caring for and
1762 disposing of the goods and, if the expenses
1763 include no disposition commission, to such
1764 commission as is usual in the trade, or if there
1765 is none, to a reasonable sum not exceeding ten per
1766 cent of the gross proceeds.

1767 (3) In complying with this section or Section
1768 2A-512, the lessee is held only to good faith.
1769 Good faith conduct hereunder is neither acceptance
1770 or conversion nor the basis of an action for
1771 damages.

1772 (4) A purchaser who purchases in good faith
1773 from a lessee pursuant to this section or Section
1774 2A-512 takes the goods free of any rights of the
1775 lessor and the supplier even though the lessee
1776 fails to comply with one or more of the
1777 requirements of this article.

1778 SECTION 2A-512. LESSEE'S DUTIES AS TO
1779 RIGHTFULLY REJECTED GOODS.

1780 (1) Except as otherwise provided with respect
1781 to goods that threaten to decline in value

1782 speedily (Section 2A-511) and subject to any
1783 security interest of a lessee (Section 2A-508(5)):

1784 (a) The lessee, after rejection of goods in
1785 the lessee's possession, shall hold them with
1786 reasonable care at the lessor's or the supplier's
1787 disposition for a reasonable time after the
1788 lessee's seasonable notification of rejection;

1789 (b) If the lessor or the supplier gives no
1790 instructions within a reasonable time after
1791 notification of rejection, the lessee may store
1792 the rejected goods for the lessor's or the
1793 supplier's account or ship them to the lessor or
1794 the supplier or dispose of them for the lessor's
1795 or the supplier's account with reimbursement in
1796 the manner provided in Section 2A-511; but

1797 (c) The lessee has no further obligations
1798 with regard to goods rightfully rejected.

1799 (2) Action by the lessee pursuant to
1800 subsection (1) is not acceptance or conversion.

1801 SECTION 2A-513. CURE BY LESSOR OF IMPROPER
1802 TENDER OR DELIVERY; REPLACEMENT.

1803 (1) If any tender or delivery by the lessor
1804 or the supplier is rejected because nonconforming
1805 and the time for performance has not yet expired,
1806 the lessor or the supplier may seasonably notify
1807 the lessee of the lessor's or the supplier's
1808 intention to cure and may then make a conforming
1809 delivery within the time provided in the lease
1810 contract.

1811 (2) If the lessee rejects a nonconforming
1812 tender that the lessor or the supplier had
1813 reasonable grounds to believe would be acceptable
1814 with or without money allowance, the lessor or the
1815 supplier may have a further reasonable time to
1816 substitute a conforming tender if he seasonably
1817 notifies the lessee.

1818 SECTION 2A-514. WAIVER OF LESSEE'S
1819 OBJECTIONS.

1820 (1) In rejecting goods, a lessee's failure to
1821 state a particular defect that is ascertainable by
1822 reasonable inspection precludes the lessee from
1823 relying on the defect to justify rejection or to
1824 establish default:

1825 (a) If, stated seasonably, the lessor or the
1826 supplier could have cured it (Section 2A-513); or

1827 (b) Between merchants if the lessor or the
1828 supplier after rejection has made a request in

1829 writing for a full and final written statement of
1830 all defects on which the lessee proposes to rely.

1831 (2) A lessee's failure to reserve rights when
1832 paying rent or other consideration against
1833 documents precludes recovery of the payment for
1834 defects apparent on the face of the documents.

1835 SECTION 2A-515. ACCEPTANCE OF GOODS.

1836 (1) Acceptance of goods occurs after the
1837 lessee has had a reasonable opportunity to inspect
1838 the goods and

1839 (a) The lessee signifies or acts with respect
1840 to the goods in a manner that signifies to the
1841 lessor or the supplier that the goods are
1842 conforming or that the lessee will take or retain
1843 them in spite of their nonconformity; or

1844 (b) The lessee fails to make an effective
1845 rejection of the goods (Section 2A-509(2)).

1846 (2) Acceptance of a part of any commercial
1847 unit is acceptance of that entire unit.

1848 SECTION 2A-516. EFFECT OF ACCEPTANCE OF
1849 GOODS; NOTICE OF DEFAULT; BURDEN OF ESTABLISHING
1850 DEFAULT AFTER ACCEPTANCE; NOTICE OF CLAIM OR
1851 LITIGATION TO PERSON ANSWERABLE OVER.

1852 (1) A lessee must pay rent for any goods
1853 accepted in accordance with the lease contract,
1854 with due allowance for goods rightfully rejected
1855 or not delivered.

1856 (2) A lessee's acceptance of goods precludes
1857 rejection of the goods accepted. In the case of a
1858 finance lease, if made with knowledge of a
1859 nonconformity, acceptance cannot be revoked
1860 because of it. In any other case, if made with
1861 knowledge of a nonconformity, acceptance cannot be
1862 revoked because of it unless the acceptance was on
1863 the reasonable assumption that the nonconformity
1864 would be seasonably cured. Acceptance does not of
1865 itself impair any other remedy provided by this
1866 article or the lease agreement for nonconformity.

1867 (3) If a tender has been accepted:

1868 (a) Within a reasonable time after the lessee
1869 discovers or should have discovered any default,
1870 the lessee shall notify the lessor and the
1871 supplier, if any, or be barred from any remedy
1872 against the party not notified;

1873 (b) Except in the case of a consumer lease,
1874 within a reasonable time after the lessee receives
1875 notice of litigation for infringement or the like
1876 (Section 2A-211) the lessee shall notify the

1877 lessor or be barred from any remedy over for
1878 liability established by the litigation; and

1879 (c) The burden is on the lessee to establish
1880 any default.

1881 (4) If a lessee is sued for breach of a
1882 warranty or other obligation for which a lessor or
1883 a supplier is answerable over the following apply:

1884 (a) The lessee may give the lessor or the
1885 supplier, or both, written notice of the
1886 litigation. If the notice states that the person
1887 notified may come in and defend and that if the
1888 person notified does not do so that person will be
1889 bound in any action against that person by the
1890 lessee by any determination of fact common to the
1891 two litigations, then unless the person notified
1892 after seasonable receipt of the notice does come
1893 in and defend that person is so bound.

1894 (b) The lessor or the supplier may demand in
1895 writing that the lessee turn over control of the
1896 litigation including settlement if the claim is
1897 one for infringement or the like (Section 2A-211)
1898 or else be barred from any remedy over. If the
1899 demand states that the lessor or the supplier
1900 agrees to bear all expense and to satisfy any
1901 adverse judgment, then unless the lessee after
1902 seasonable receipt of the demand does turn over
1903 control the lessee is so barred.

1904 (5) Subsections (3) and (4) apply to any
1905 obligation of a lessee to hold the lessor or the
1906 supplier harmless against infringement or the like
1907 (Section 2A-211).

1908 SECTION 2A-517. REVOCATION OF ACCEPTANCE OF
1909 GOODS.

1910 (1) A lessee may revoke acceptance of a lot
1911 or commercial unit whose nonconformity
1912 substantially impairs its value to the lessee if
1913 the lessee has accepted it:

1914 (a) Except in the case of a finance lease, on
1915 the reasonable assumption that its nonconformity
1916 would be cured and it has not been seasonably
1917 cured; or

1918 (b) Without discovery of the nonconformity if
1919 the lessee's acceptance was reasonably induced
1920 either by the lessor's assurances or, except in
1921 the case of a finance lease, by the difficulty of
1922 discovery before acceptance.

1923 (2) Except in the case of a finance lease
1924 that is not a consumer lease, a lessee may revoke

1925 acceptance of a lot or commercial unit if the
1926 lessor defaults under the lease contract and the
1927 default substantially impairs the value of that
1928 lot or commercial unit to the lessee.

1929 (3) If the lease agreement so provides, the
1930 lessee may revoke acceptance of a lot or
1931 commercial unit because of other defaults by the
1932 lessor.

1933 (4) Revocation of acceptance must occur
1934 within a reasonable time after the lessee
1935 discovers or should have discovered the ground for
1936 it and before any substantial change in condition
1937 of the goods which is not caused by the
1938 nonconformity. Revocation is not effective until
1939 the lessee notifies the lessor.

1940 (5) A lessee who so revokes has the same
1941 rights and duties with regard to the goods
1942 involved as if the lessee had rejected them.

1943 SECTION 2A-518. COVER; SUBSTITUTE GOODS.

1944 (1) After a default by a lessor under the
1945 lease contract of the type described in Section
1946 2A-508(1), or, if agreed, after other default by
1947 the lessor, the lessee may cover by making any
1948 purchase or lease or contract to purchase or
1949 lease goods in substitution for those due from the
1950 lessor.

1951 (2) Except as otherwise provided with respect
1952 to damages liquidated in the lease agreement
1953 (Section 2A-504) or otherwise determined pursuant
1954 to agreement of the parties (Sections 1-102(3) and
1955 2A-503), if a lessee's cover is by a lease
1956 agreement substantially similar to the original
1957 lease agreement and the new lease agreement is
1958 made in good faith and in a commercially
1959 reasonable manner, the lessee may recover from the
1960 lessor as damages (i) the present value, as of the
1961 date of the commencement of the term of the new
1962 lease agreement, of the rent under the new lease
1963 agreement applicable to that period of the new
1964 lease term which is comparable to the then
1965 remaining term of the original lease agreement
1966 minus the present value as of the same date of the
1967 total rent for the then remaining lease term of
1968 the original lease agreement, and (ii) any
1969 incidental or consequential damages, less expenses
1970 saved in consequence of the lessor's default.

1971 (3) If a lessee's cover is by lease agreement
1972 that for any reason does not qualify for treatment

1973 under subsection (2), or is by purchase or
1974 otherwise, the lessee may recover from the lessor
1975 as if the lessee had elected not to cover and
1976 Section 2A-519 governs.

1977 SECTION 2A-519. LESSEE'S DAMAGES FOR
1978 NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH OF
1979 WARRANTY IN REGARD TO ACCEPTED GOODS.

1980 (1) Except as otherwise provided with respect
1981 to damages liquidated in the lease agreement
1982 (Section 2A-504) or otherwise determined pursuant
1983 to agreement of the parties (Sections 1-102(3) and
1984 2A-503), if a lessee elects not to cover or a
1985 lessee elects to cover and the cover is by lease
1986 agreement that for any reason does not qualify for
1987 treatment under Section 2A-518(2), or is by
1988 purchase or otherwise, the measure of damages for
1989 nondelivery or repudiation by the lessor or for
1990 rejection or revocation of acceptance by the
1991 lessee is the present value, as of the date of the
1992 default, of the then market rent minus the present
1993 value as of the same date of the original rent,
1994 computed for the remaining lease term of the
1995 original lease agreement, together with incidental
1996 and consequential damages, less expenses saved in
1997 consequence of the lessor's default.

1998 (2) Market rent is to be determined as of the
1999 place for tender or, in cases of rejection after
2000 arrival or revocation of acceptance, as of the
2001 place of arrival.

2002 (3) Except as otherwise agreed, if the lessee
2003 has accepted goods and given notification (Section
2004 2A-516(3)), the measure of damages for
2005 nonconforming tender or delivery or other default
2006 by a lessor is the loss resulting in the ordinary
2007 course of events from the lessor's default as
2008 determined in any manner that is reasonable
2009 together with incidental and consequential
2010 damages, less expenses saved in consequence of the
2011 lessor's default.

2012 (4) Except as otherwise agreed, the measure
2013 of damages for breach of warranty is the present
2014 value at the time and place of acceptance of the
2015 difference between the value of the use of the
2016 goods accepted and the value if they had been as
2017 warranted for the lease term, unless special
2018 circumstances show proximate damages of a
2019 different amount, together with incidental and

2020 consequential damages, less expenses saved in
2021 warranty.

2022 SECTION 2A-520. LESSEE'S INCIDENTAL AND
2023 CONSEQUENTIAL DAMAGES.

2024 (1) Incidental damages resulting from a
2025 lessor's default include expenses reasonably
2026 incurred in inspection, receipt, transportation,
2027 and care and custody of goods rightfully rejected
2028 or goods the acceptance of which is justifiably
2029 revoked, any commercially reasonable charges,
2030 expenses or commissions in connection with
2031 effecting cover, and any other reasonable expense
2032 incident to the default.

2033 (2) Consequential damages resulting from a
2034 lessor's default include:

2035 (a) Any loss resulting from general or
2036 particular requirements and needs of which the
2037 lessor at the time of contracting had reason to
2038 know and which could not reasonably be prevented
2039 by cover or otherwise; and

2040 (b) Injury to person or property proximately
2041 resulting from any breach of warranty.

2042 SECTION 2A-521. LESSEE'S RIGHT TO SPECIFIC
2043 PERFORMANCE OR REPLEVIN.

2044 (1) Specific performance may be decreed if
2045 the goods are unique or in other proper
2046 circumstances.

2047 (2) A decree for specific performance may
2048 include any terms and conditions as to payment of
2049 the rent, damages, or other relief that the court
2050 deems just.

2051 (3) A lessee has a right of replevin,
2052 detinue, sequestration, claim and delivery, or the
2053 like for goods identified to the lease contract if
2054 after reasonable effort the lessee is unable to
2055 effect cover for those goods or the circumstances
2056 reasonably indicate that the effort will be
2057 unavailing.

2058 SECTION 2A-522. LESSEE'S RIGHT TO GOODS ON
2059 LESSOR'S INSOLVENCY.

2060 (1) Subject to subsection (2) and even though
2061 the goods have not been shipped, a lessee who has
2062 paid a part or all of the rent and security for
2063 goods identified to a lease contract (Section
2064 2A-217) on making and keeping good a tender of any
2065 unpaid portion of the rent and security due under
2066 the lease contract may recover the goods
2067 identified from the lessor if the lessor becomes

2068 insolvent within ten days after receipt of the
2069 first instalment of rent and security.

2070 (2) A lessee acquires the right to recover
2071 goods identified to a lease contract only if they
2072 conform to the lease contract.

2073 C. DEFAULT BY LESSEE

2074 SECTION 2A-523. LESSOR'S REMEDIES.

2075 (1) If a lessee wrongfully rejects or revokes
2076 acceptance of goods or fails to make a payment
2077 when due or repudiates with respect to a part or
2078 the whole, then, with respect to any goods
2079 involved, and with respect to all of the goods if
2080 under an instalment lease contract the value of
2081 the whole lease contract is substantially impaired
2082 (Section 2A-510), the lessee is in default under
2083 the lease contract and the lessor may:

2084 (a) Cancel the lease contract (Section
2085 2A-505(1));

2086 (b) Proceed respecting goods not identified
2087 to the lease contract (Section 2A-524);

2088 (c) Withhold delivery of the goods and take
2089 possession of goods previously delivered (Section
2090 2A-525);

2091 (d) Stop delivery of the goods by any bailee
2092 (Section 2A-526);

2093 (e) Dispose of the goods and recover damages
2094 (Section 2A-527), or retain the goods and recover
2095 damages (Section 2A-528), or in a proper case
2096 recover rent (Section 2A-529);

2097 (f) Exercise any other rights or pursue any
2098 other remedies provided in the lease contract.

2099 (2) If a lessor does not fully exercise a
2100 right or obtain a remedy to which the lessor is
2101 entitled under subsection (1), the lessor may
2102 recover the loss resulting in the ordinary course
2103 of events from the lessee's default as determined
2104 in any reasonable manner, together with incidental
2105 damages, less expenses saved in consequence of the
2106 lessee's default.

2107 (3) If a lessee is otherwise in default under
2108 a lease contract, the lessor may exercise the
2109 rights and pursue the remedies provided in the
2110 lease contract, which may include a right to
2111 cancel the lease. In addition, unless otherwise
2112 provided in the lease contract:

2113 (a) If the default substantially impairs the
2114 value of the lease contract to the lessor, the

2115 lessor may exercise the rights and pursue the
2116 remedies provided in subsections (1) or (2); or
2117 (b) If the default does not substantially
2118 impair the value of the lease contract to the
2119 lessor, the lessor may recover as provided in
2120 subsection (2).

2121 SECTION 2A-524. LESSOR'S RIGHT TO IDENTIFY
2122 GOODS TO LEASE CONTRACT.

2123 (1) After default by the lessee under the
2124 lease contract of the type described in Section
2125 2A-523(1) or Section 2A-523(3)(a) or, if agreed,
2126 after other default by the lessee, the lessor may:

2127 (a) Identify to the lease contract conforming
2128 goods not already identified if at the time the
2129 lessor learned of the default they were in the
2130 lessor's or the supplier's possession or control;
2131 and

2132 (b) Dispose of goods (Section 2A-527(1)) that
2133 demonstrably have been intended for the particular
2134 lease contract even though those goods are
2135 unfinished.

2136 (2) If the goods are unfinished, in the
2137 exercise of reasonable commercial judgment for the
2138 purposes of avoiding loss and of effective
2139 realization, an aggrieved lessor or the supplier
2140 may either complete manufacture and wholly
2141 identify the goods to the lease contract or cease
2142 manufacture and lease, sell, or otherwise dispose
2143 of the goods for scrap or salvage value or proceed
2144 in any other reasonable manner.

2145 SECTION 2A-525. LESSOR'S RIGHT TO POSSESSION
2146 OF GOODS.

2147 (1) If a lessor discovers the lessee to be
2148 insolvent, the lessor may refuse to deliver the
2149 goods.

2150 (2) After a default by the lessee under the
2151 lease contract of the type described in Section
2152 2A-523(1) or 2A-523(3)(a) or, if agreed, after
2153 other default by the lessee, the lessor has the
2154 right to take possession of the goods. If the
2155 lease contract so provides, the lessor may require
2156 the lessee to assemble the goods and make them
2157 available to the lessor at a place to be
2158 designated by the lessor which is reasonably
2159 convenient to both parties. Without removal, the
2160 lessor may render unusable any goods employed in
2161 trade or business, and may dispose of goods on the
2162 lessee's premises (Section 2A-527).

2163 (3) The lessor may proceed under subsection
2164 (2) without judicial process if that it can be
2165 done without breach of the peace or the lessor may
2166 proceed by action.

2167 SECTION 2A-526. LESSOR'S STOPPAGE OF DELIVERY
2168 IN TRANSIT OR OTHERWISE.

2169 (1) A lessor may stop delivery of goods in
2170 the possession of a carrier or other bailee if the
2171 lessor discovers the lessee to be insolvent and
2172 may stop delivery of carload, truckload,
2173 planeload, or larger shipments of express or
2174 freight if the lessee repudiates or fails to make
2175 a payment due before delivery, whether for rent,
2176 security or otherwise under the lease contract, or
2177 for any other reason the lessor has a right to
2178 withhold or take possession of the goods.

2179 (2) In pursuing its remedies under subsection
2180 (1), the lessor may stop delivery until:

- 2181 (a) Receipt of the goods by the lessee;
2182 (b) Acknowledgment to the lessee by any
2183 bailee of the goods, except a carrier, that the
2184 bailee holds the goods for the lessee; or
2185 (c) Such an acknowledgment to the lessee by a
2186 carrier via reshipment or as warehouseman.

2187 (3) (a) To stop delivery, a lessor shall so
2188 notify as to enable the bailee by reasonable
2189 diligence to prevent delivery of the goods.

2190 (b) After notification, the bailee shall hold
2191 and deliver the goods according to the directions
2192 of the lessor, but the lessor is liable to the
2193 bailee for any ensuing charges or damages.

2194 (c) A carrier who has issued a nonnegotiable
2195 bill of lading is not obliged to obey a
2196 notification to stop received from a person other
2197 than the consignor.

2198 SECTION 2A-527. LESSOR'S RIGHTS TO DISPOSE OF
2199 GOODS.

2200 (1) After a default by a lessee under the
2201 lease contract of the type described in Section
2202 2A-523(1) or 2A-523(3)(a) or after the lessor
2203 refuses to deliver or takes possession of goods
2204 (Section 2A-525 or 2A-526), or, if agreed, after
2205 other default by a lessee, the lessor may dispose
2206 of the goods concerned or the undelivered balance
2207 thereof by lease, sale, or otherwise.

2208 (2) Except as otherwise provided with respect
2209 to damages liquidated in the lease agreement
2210 (Section 2A-504) or otherwise determined pursuant

2211 to agreement of the parties (Sections 1-102(3) and
2212 2A-503), if the disposition is by lease agreement
2213 substantially similar to the original lease
2214 agreement and the new lease agreement is made in
2215 good faith and in a commercially reasonable
2216 manner, the lessor may recover from the lessee as
2217 damages (i) accrued and unpaid rent as of the date
2218 of the commencement of the term of the new lease
2219 agreement, (ii) the present value, as of the same
2220 date, of the total rent for the then remaining
2221 lease term of the original lease agreement minus
2222 the present value, as of the same date, of the
2223 rent under the new lease agreement applicable to
2224 that period of the new lease term which is
2225 comparable to the then remaining term of the
2226 original lease agreement, and (iii) any incidental
2227 damages allowed under Section 2A-530, less
2228 expenses saved in consequence of the lessee's
2229 default.

2230 (3) If the lessor's disposition is by lease
2231 agreement that for any reason does not qualify for
2232 treatment under subsection (2), or is by sale or
2233 otherwise, the lessor may recover from the lessee
2234 as if the lessor had elected not to dispose of the
2235 goods and Section 2A-528 governs.

2236 (4) A subsequent buyer or lessee who buys or
2237 leases from the lessor in good faith for value as
2238 a result of a disposition under this section takes
2239 the goods free of the original lease contract and
2240 any rights of the original lessee even though the
2241 lessor fails to comply with one or more of the
2242 requirements of this article.

2243 (5) The lessor is not accountable to the
2244 lessee for any profit made on any disposition. A
2245 lessee who has rightfully rejected or justifiably
2246 revoked acceptance shall account to the lessor for
2247 any excess over the amount of the lessee's
2248 security interest (Section 2A-508(5)).

2249 SECTION 2A-528. LESSOR'S DAMAGES FOR
2250 NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR
2251 OTHER DEFAULT.

2252 (1) Except as otherwise provided with respect
2253 to damages liquidated in the lease agreement
2254 (Section 2A-504) or otherwise determined pursuant
2255 to agreement of the parties (Sections 1-102(3) and
2256 2A-503), if a lessor elects to retain the goods or
2257 a lessor elects to dispose of the goods and the
2258 disposition is by lease agreement that for any

2259 reason does not qualify for treatment under
2260 Section 2A-527(2), or is by sale or otherwise, the
2261 lessor may recover from the lessee as damages for
2262 a default of the type described in Section
2263 2A-523(1) or 2A-523(3)(a), or, if agreed, for
2264 other default of the lessee, (i) accrued and
2265 unpaid rent as of the date of default if the
2266 lessee has never taken possession of the goods,
2267 or, if the lessee has taken possession of the
2268 goods, as of the date the lessor repossesses the
2269 goods or an earlier date on which the lessee makes
2270 a tender of the goods to the lessor, (ii) the
2271 present value as of the date determined under
2272 clause (i) of the total rent for the then
2273 remaining lease term of the original lease
2274 agreement minus the present value as of the same
2275 date of the market rent at the place where the
2276 goods are located computed for the same lease
2277 term, and (iii) any incidental damages allowed
2278 under Section 2A-530, less expenses saved in
2279 consequence of the lessee's default.

2280 (2) If the measure of damages provided in
2281 subsection (1) is inadequate to put a lessor in as
2282 good a position as performance would have, the
2283 measure of damages is the present value of the
2284 profit, including reasonable overhead, the lessor
2285 would have made from full performance by the
2286 lessee, together with any incidental damages
2287 allowed under Section 2A-530, due allowance for
2288 costs reasonably incurred and due credit for
2289 payments or proceeds of disposition.

2290 SECTION 2A-529. LESSOR'S ACTION FOR THE RENT.

2291 (1) After default by the lessee under the
2292 lease contract of the type described in Section
2293 2A-523(1) or 2A-523(3)(a) or, if agreed, after
2294 other default by the lessee, if the lessor
2295 complies with subsection (2), the lessor may
2296 recover from the lessee as damages:

2297 (a) For goods accepted by the lessee and not
2298 repossessed by or tendered to the lessor, and for
2299 conforming goods lost or damaged within a
2300 commercially reasonable time after risk of loss
2301 passes to the lessee (Section 2A-219), (i) accrued
2302 and unpaid rent as of the date of entry of
2303 judgment in favor of the lessor, (ii) the present
2304 value as of the same date of the rent for the then
2305 remaining lease term of the lease agreement, and
2306 (iii) any incidental damages allowed under Section

2307 2A-530, less expenses saved in consequence of the
2308 lessee's default; and

2309 (b) For goods identified to the lease
2310 contract if the lessor is unable after reasonable
2311 effort to dispose of them at a reasonable price or
2312 the circumstances reasonably indicate that effort
2313 will be unavailing, (i) accrued and unpaid rent as
2314 of the date of entry of judgment in favor of the
2315 lessor, (ii) the present value as of the same date
2316 of the rent for the then remaining lease term of
2317 the lease agreement, and (iii) any incidental
2318 damages allowed under Section 2A-530, less
2319 expenses saved in consequence of the lessee's
2320 default.

2321 (2) Except as provided in subsection (3), the
2322 lessor shall hold for the lessee for the remaining
2323 lease term of the lease agreement any goods that
2324 have been identified to the lease contract and are
2325 in the lessor's control.

2326 (3) The lessor may dispose of the goods at
2327 any time before collection of the judgment for
2328 damages obtained pursuant to subsection (1). If
2329 the disposition is before the end of the remaining
2330 lease term of the lease agreement, the lessor's
2331 recovery against the lessee for damages is
2332 governed by Section 2A-527 or Section 2A-528, and
2333 the lessor will cause an appropriate credit to be
2334 provided against a judgment for damages to the
2335 extent that the amount of the judgment exceeds the
2336 recovery available pursuant to Section 2A-527 or
2337 2A-528.

2338 (4) Payment of the judgment for damages
2339 obtained pursuant to subsection (1) entitles the
2340 lessee to the use and possession of the goods not
2341 then disposed of for the remaining lease term of
2342 and in accordance with the lease agreement.

2343 (5) After default by the lessee under the
2344 lease contract of the type described in Section
2345 2A-523(1) or Section 2A-523(3)(a) or, if agreed,
2346 after other default by the lessee, a lessor who is
2347 held not entitled to rent under this section must
2348 nevertheless be awarded damages for nonacceptance
2349 under Section 2A-527 or Section 2A-528.

2350 SECTION 2A-530. LESSOR'S INCIDENTAL DAMAGES.

2351 Incidental damages to an aggrieved lessor
2352 include any commercially reasonable charges,
2353 expenses, or commissions incurred in stopping
2354 delivery, in the transportation, care and custody

2355 of goods after the lessee's default, in connection
2356 with return or disposition of the goods, or
2357 otherwise resulting from the default.

2358 SECTION 2A-531. STANDING TO SUE THIRD PARTIES
2359 FOR INJURY TO GOODS.

2360 (1) If a third party so deals with goods that
2361 have been identified to a lease contract as to
2362 cause actionable injury to a party to the lease
2363 contract (a) the lessor has a right of action
2364 against the third party, and (b) the lessee also
2365 has a right of action against the third party if
2366 the lessee:

2367 (i) Has a security interest in the goods;

2368 (ii) Has an insurable interest in the goods;

2369 or

2370 (iii) Bears the risk of loss under the lease
2371 contract or has since the injury assumed that risk
2372 as against the lessor and the goods have been
2373 converted or destroyed.

2374 (2) If at the time of the injury the party
2375 plaintiff did not bear the risk of loss as against
2376 the other party to the lease contract and there is
2377 no arrangement between them for disposition of the
2378 recovery, his suit or settlement, subject to his
2379 own interest, is as a fiduciary for the other
2380 party to the lease contract.

2381 (3) Either party with the consent of the
2382 other may sue for the benefit of whom it may
2383 concern.

2384 SECTION 2A-532. LESSOR'S RIGHTS TO RESIDUAL
2385 INTEREST.

2386 In addition to any other recovery permitted
2387 by this article or other law, the lessor may
2388 recover from the lessee an amount that will fully
2389 compensate the lessor for any loss of or damage to
2390 the lessor's residual interest in the goods caused
2391 by the default of the lessee.

2392 Sec. 2. Section 42a-1-105 of the general
2393 statutes, as amended by section 65 of public act
2394 97-182, is repealed and the following is
2395 substituted in lieu thereof:

2396 (1) Except as provided hereafter in this
2397 section, when a transaction bears a reasonable
2398 relation to this state and also to another state
2399 or nation the parties may agree that the law
2400 either of this state or of such other state or
2401 nation shall govern their rights and duties.
2402 Failing such agreement this title applies to

2403 transactions bearing an appropriate relation to
2404 this state.

2405 (2) Where one of the following provisions of
2406 this title specifies the applicable law, that
2407 provision governs and a contrary agreement is
2408 effective only to the extent permitted by the law,
2409 including the conflict of laws rules, so
2410 specified:

2411 Rights of creditors against sold goods. Section
2412 42a-2-402.

2413 APPLICABILITY OF THE ARTICLE ON LEASES. SECTIONS
2414 2A-105 AND 2A-106.

2415 Applicability of the article on bank deposits
2416 and collections. Section 42a-4-102.

2417 Governing law in the article on funds transfers.
2418 Section 42a-4A-507.

2419 Letters of credit. Section 42a-5-116.

2420 Applicability of the article on investment
2421 securities. Section 10 of [this act]
2422 PUBLIC ACT 97-182.

2423 Perfection provisions of the article on
2424 secured transactions. Section 42a-9-103a.

2425 Sec. 3. Subdivision (37) of section 42a-1-201
2426 of the general statutes is repealed and the
2427 following is substituted in lieu thereof:

2428 (37) (A) "Security interest" means an
2429 interest in personal property or fixtures which
2430 secures payment or performance of an obligation.
2431 The retention or reservation of title by a seller
2432 of goods notwithstanding shipment or delivery to
2433 the buyer is limited in effect to a reservation of
2434 a "security interest". The term also includes any
2435 interest of a buyer of accounts or chattel paper
2436 which is subject to article 9. The special
2437 property interest of a buyer of goods on
2438 identification of [such] THOSE goods to a contract
2439 for sale under section 42a-2-401 is not a
2440 "security interest", but a buyer may also acquire
2441 a "security interest" by complying with article 9.
2442 Unless a [lease or] consignment is intended as

2443 security, reservation of title thereunder is not a
2444 "security interest", but a consignment [is] in any
2445 event IS subject to the provisions of section
2446 42a-2-326 concerning consignment sales. [Whether a
2447 lease is intended as security is to be determined
2448 by the facts of each case; however, (a) the
2449 inclusion of an option to purchase does not of
2450 itself make the lease one intended for security,
2451 and (b) an agreement that upon compliance with the
2452 terms of the lease the lessee shall become or has
2453 the option to become the owner of the property for
2454 no additional consideration or for a nominal
2455 consideration does make the lease one intended for
2456 security.]

2457 (B) WHETHER A TRANSACTION CREATES A LEASE OR
2458 SECURITY INTEREST IS DETERMINED BY THE FACTS OF
2459 EACH CASE; HOWEVER, A TRANSACTION CREATES A
2460 SECURITY INTEREST IF THE CONSIDERATION THE LESSEE
2461 IS TO PAY THE LESSOR FOR THE RIGHT TO POSSESSION
2462 AND USE OF THE GOODS IS AN OBLIGATION FOR THE TERM
2463 OF THE LEASE NOT SUBJECT TO TERMINATION BY THE
2464 LESSEE, AND (i) THE ORIGINAL TERM OF THE LEASE IS
2465 EQUAL TO OR GREATER THAN THE REMAINING ECONOMIC
2466 LIFE OF THE GOODS, (ii) THE LESSEE IS BOUND TO
2467 RENEW THE LEASE FOR THE REMAINING ECONOMIC LIFE OF
2468 THE GOODS OR IS BOUND TO BECOME THE OWNER OF THE
2469 GOODS, (iii) THE LESSEE HAS AN OPTION TO RENEW THE
2470 LEASE FOR THE REMAINING ECONOMIC LIFE OF THE GOODS
2471 FOR NO ADDITIONAL CONSIDERATION OR NOMINAL
2472 ADDITIONAL CONSIDERATION UPON COMPLIANCE WITH THE
2473 LEASE AGREEMENT, OR (iv) THE LESSEE HAS AN OPTION
2474 TO BECOME THE OWNER OF THE GOODS FOR NO ADDITIONAL
2475 CONSIDERATION OR NOMINAL ADDITIONAL CONSIDERATION
2476 UPON COMPLIANCE WITH THE LEASE AGREEMENT.

2477 (C) A TRANSACTION DOES NOT CREATE A SECURITY
2478 INTEREST MERELY BECAUSE IT PROVIDES THAT (i) THE
2479 PRESENT VALUE OF THE CONSIDERATION THE LESSEE IS
2480 OBLIGATED TO PAY THE LESSOR FOR THE RIGHT TO
2481 POSSESSION AND USE OF THE GOODS IS SUBSTANTIALLY
2482 EQUAL TO OR IS GREATER THAN THE FAIR MARKET VALUE
2483 OF THE GOODS AT THE TIME THE LEASE IS ENTERED
2484 INTO, (ii) THE LESSEE ASSUMES RISK OF LOSS OF THE
2485 GOODS, OR AGREES TO PAY TAXES, INSURANCE, FILING,
2486 RECORDING OR REGISTRATION FEES, OR SERVICE OR
2487 MAINTENANCE COSTS WITH RESPECT TO THE GOODS, (iii)
2488 THE LESSEE HAS AN OPTION TO RENEW THE LEASE OR TO
2489 BECOME THE OWNER OF THE GOODS, (iv) THE LESSEE HAS
2490 AN OPTION TO RENEW THE LEASE FOR A FIXED RENT THAT

2491 IS EQUAL TO OR GREATER THAN THE REASONABLY
2492 PREDICTABLE FAIR MARKET RENT FOR THE USE OF THE
2493 GOODS FOR THE TERM OF THE RENEWAL AT THE TIME THE
2494 OPTION IS TO BE PERFORMED, OR (v) THE LESSEE HAS
2495 AN OPTION TO BECOME THE OWNER OF THE GOODS FOR A
2496 FIXED PRICE THAT IS EQUAL TO OR GREATER THAN THE
2497 REASONABLY PREDICTABLE FAIR MARKET VALUE OF THE
2498 GOODS AT THE TIME THE OPTION IS TO BE PERFORMED.

2499 (D) FOR PURPOSES OF THIS SUBDIVISION: (i)
2500 ADDITIONAL CONSIDERATION IS NOT NOMINAL IF (a)
2501 WHEN THE OPTION TO RENEW THE LEASE IS GRANTED TO
2502 THE LESSEE THE RENT IS STATED TO BE THE FAIR
2503 MARKET RENT FOR THE USE OF THE GOODS FOR THE TERM
2504 OF THE RENEWAL DETERMINED AT THE TIME THE OPTION
2505 IS TO BE PERFORMED, OR (b) WHEN THE OPTION TO
2506 BECOME THE OWNER OF THE GOODS IS GRANTED TO THE
2507 LESSEE THE PRICE IS STATED TO BE THE FAIR MARKET
2508 VALUE OF THE GOODS DETERMINED AT THE TIME THE
2509 OPTION IS TO BE PERFORMED. ADDITIONAL
2510 CONSIDERATION IS NOMINAL IF IT IS LESS THAN THE
2511 LESSEE'S REASONABLY PREDICTABLE COST OF PERFORMING
2512 UNDER THE LEASE AGREEMENT IF THE OPTION IS NOT
2513 EXERCISED; (ii) "REASONABLY PREDICTABLE" AND
2514 "REMAINING ECONOMIC LIFE OF THE GOODS" ARE TO BE
2515 DETERMINED WITH REFERENCE TO THE FACTS AND
2516 CIRCUMSTANCES AT THE TIME THE TRANSACTION IS
2517 ENTERED INTO; AND (iii) "PRESENT VALUE" MEANS THE
2518 AMOUNT AS OF A DATE CERTAIN OF ONE OR MORE SUMS
2519 PAYABLE IN THE FUTURE, DISCOUNTED TO THE DATE
2520 CERTAIN. THE DISCOUNT IS DETERMINED BY THE
2521 INTEREST RATE SPECIFIED BY THE PARTIES IF THE RATE
2522 IS NOT MANIFESTLY UNREASONABLE AT THE TIME THE
2523 TRANSACTION IS ENTERED INTO; OTHERWISE, THE
2524 DISCOUNT IS DETERMINED BY A COMMERCIALY
2525 REASONABLE RATE THAT TAKES INTO ACCOUNT THE FACTS
2526 AND CIRCUMSTANCES OF EACH CASE AT THE TIME THE
2527 TRANSACTION WAS ENTERED INTO.

2528 (E) For purposes of this [section]
2529 SUBDIVISION, "security interest" does not include
2530 a rent-to-own agreement, as defined in section
2531 42-240.

2532 Sec. 4. Section 42a-9-113 of the general
2533 statutes is repealed and the following is
2534 substituted in lieu thereof:

2535 A security interest arising solely under
2536 article 2 OR ARTICLE 2A is subject to the
2537 provisions of this article except that to the
2538 extent that and so long as the debtor does not

2539 have or does not lawfully obtain possession of the
2540 goods (a) no security agreement is necessary to
2541 make the security interest enforceable; and (b) no
2542 filing is required to perfect the security
2543 interest; and (c) the rights of the secured party
2544 on default by the debtor are governed (i) by
2545 article 2 IN THE CASE OF A SECURITY INTEREST
2546 ARISING SOLELY UNDER SAID ARTICLE OR (ii) BY
2547 ARTICLE 2A IN THE CASE OF A SECURITY INTEREST
2548 ARISING SOLELY UNDER SAID ARTICLE.

2549 JUD COMMITTEE VOTE: YEA 39 NAY 0 JFS

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER sHB 5539

STATE IMPACT	None
MUNICIPAL IMPACT	None
STATE AGENCY(S)	None

* * * * *

OLR BILL ANALYSIS

sHB 5539

AN ACT ADDING ARTICLE 2A ON LEASES TO THE UNIFORM COMMERCIAL CODE

SUMMARY: This bill codifies the law on leasing goods, fills gaps, and clarifies ambiguities in the Uniform Commercial Code (UCC) Article 2 on sales and common law contracts and remedies rules.

The bill distinguishes between true leases, finance leases, and consumer leases. The latter two types are subsets of true leases. In a true lease the lessor gives possession and the right to use the goods to a lessee for a period of time in return for rent. Title to the goods and a residual interest remain with the lessor.

Finance leases are made by lessors who are not the fundamental supplier of the leased goods. They lease goods to lessees as a means of financing their acquisition. Consumer leases are those in which the lessee takes the lease primarily for a personal, family, or household purpose. The bill provides some protections for consumers regarding unconscionable

leases, choice of law provisions, and options to accelerate at will.

The bill states general rules pertaining to leasing transactions, including choice of law provisions, unconscionability, and acceleration options.

The bill establishes criteria for creating and interpreting lease contracts. It specifies how the contract must be performed and how it can be modified, rescinded, or waived. It establishes criteria for identifying the goods subject to the contract. It specifies who can insure the goods and who bears the risk of loss. It imposes express and implied warranties.

The bill defines conditions for performance and repudiation of a lease contract, as well as the responsibility of parties when performance is impaired. It creates an extensive structure of remedies in the event of default by the lessor or lessee.

The bill creates rules governing lessor and lessee relationships with third parties. In particular, it specifies when lessors and lessees can assign their rights and the effect of this assignment. It identifies the effect of subsequent leases or sales of the goods on the rights of the lessor, lessee, and subsequent lessee or buyer. It establishes lien priorities, and the priority of interests when the leased goods are fixtures or accessions.

The bill delineates the distinctions between leases and security interests and establishes when leases are subject to the UCC's secured transactions requirements (Article 9). It generally makes security interests arising solely under the bill subject to those requirements.

The bill excludes from its coverage leases for: (1) goods, including motor vehicles, used or bought primarily for personal, family, or household purposes if the aggregate cash price is \$50,000 or less or (2) equipment having an aggregate cash price of \$16,000 or less, if the consumer goods or equipment are included in one retail installment contract or installment loan contract. Equipment is excluded only if used or bought for use primarily in business, including farming or a

profession, or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not inventory, farm products, or consumer goods.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Finance Leases

The bill creates a separate category of leases known as "finance leases." A finance lease is a three-party transaction. A supplier manufactures or supplies the goods pursuant to the lessee's specifications, the lessor enters into a sales or lease agreement with the supplier, and the lessor and lessee enter into the finance lease of the goods. The lessor acts as a financier for the acquisition of the leased goods. By definition, the lessor does not select, manufacture, or supply the goods. It acquires them or the right to possess or use them in connection with the particular lease.

For a transaction to qualify as a finance lease, one of the following must occur:

1. before signing the lease contract, the lessee receives a copy of the supply contract by which the lessor acquired the goods or the right to possess or use them;
2. the lessee's approval of the supply contract becomes a condition to the effectiveness of the lease contract;
3. before signing the lease contract, the lessee is given a complete statement of the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, provided to the lessor by the supplier, including those of third parties such as the manufacturer; or
4. if the lease is not a consumer lease, the lessor informs the lessee in writing before he signs the lease contract of (a) the supplier's identity, (b) that the lessee is entitled

under the bill to the promises and warranties provided to the lessor by the supplier, and (c) that the lessee may communicate with the supplier and receive a complete statement of the promises and warranties.

The finance lessee is the automatic beneficiary of all warranties under the supply contract. The finance lessor is held only to express warranties and an implied warranty that for the lease term no person holds a claim to the goods that arose from the lessor's act or omission. The bill exempts the finance lessor from implied warranties of fitness and merchantability and that goods are delivered free of rightful claims.

For commercial, but not consumer finance leases, the bill imposes automatic "hell or high water" obligations on the lessee. Upon the lessee's acceptance of the goods, its promises to the lessor under the lease contract become irrevocable and independent. The lessee must perform even if the lessor's performance is not in accordance with the contract provisions.

Supply Contracts Affecting Finance Leases

Under the bill, the lessee in a finance lease has an enforceable right to the benefits of a supplier's contractual promises to the lessor, as well as any applicable express implied warranties. (A supply contract is one under which the lessor buys or leases goods to be leased to another person or entity.) But the lessee's rights are subject to the terms of the supply contract and warranty and all defenses or claims arising from them. Any exclusion, modification, or limitation of any term of the supply contract or warranty and any defense or claim which is effective against the lessor is also effective against the lessee as beneficiary.

Under the bill, any modification or rescission of the supply contract is effective between the supplier and lessee unless, prior to the modification or rescission, the supplier knew that the lessee had entered into the finance lease. Where the supply contract is rescinded or modified, the bill requires the lessor to provide to the lessee what it would otherwise lose through the rescission or modification.

Protection for Consumer Lessees

Under the bill, a consumer lease is one in which the lessee is an individual who takes the lease primarily for a personal, family, or household purpose, and the lessor is regularly engaged in the business of leasing or selling.

The bill's major consumer protections pertain to agreements to choose applicable law and judicial forum, unconscionability, and options to accelerate at will. The bill makes unenforceable a consumer lease provision that restricts the applicable law to a jurisdiction other than where the lessee resides or where the goods are to be used (1) when the lease agreement becomes enforceable or (2) within 30 days thereafter. It similarly makes unenforceable a lease provision that chooses a judicial forum that would otherwise not have jurisdiction of the lessee.

Under the bill, if the court finds that a consumer lease contract or clause was induced by unconscionable conduct, or that unconscionable conduct occurred in the collection of money due under the contract, the court may award appropriate relief. If, for any type of lease, the court finds the contract or a clause to have been unconscionable, it may refuse to enforce the entire contract or the clause, or may require that the clause be applied in a way which would not be unconscionable.

For unconscionability claims successfully raised by a consumer lessee, the bill requires the court to award reasonable attorney's fees to the lessee. On the other hand, the court must award attorney's fees to the opposing party if the court determines that the lessee knew the action was groundless.

If a lease authorizes a party to accelerate payment or performance or require collateral or additional collateral, either "at will" or "when he deems himself insecure," the party may do so only if, in good faith, he believes that the prospect of payment or performance is impaired. For consumer leases, the burden of establishing good faith is on the party who accelerated; for other leases, it is on the party against whom the provision was exercised.

Certificate of Title and Consumer Protection Laws

The bill specifies that leases covered by it are also subject to certificate of title statutes of this and other states. The bill also specifies that covered leases are subject to Connecticut consumer protection statutes, as well as consumer protection decisions rendered in state courts on or before October 1, 1994.

Formation and Interpretation of Lease Contracts

Formation in General. Under the bill, a lease contract may be made in any way, including the parties' conduct, to show their agreement. A contract is sufficient even if (1) it has indefinite terms, so long as the parties intended to make a contract and there is a reasonably certain basis for providing a remedy or (2) the time of its creation is undetermined.

Unless otherwise unambiguously indicated by the language or circumstances, the offer to make a contract invites acceptance in any way and by any medium reasonable in the circumstances. If beginning requested performance is one way to show acceptance, the person who makes the offer can treat it as having lapsed if he is not notified of its acceptance within a reasonable time.

The bill limits the ability of a merchant to revoke as signed written offer to lease goods to or from another person that states that it will be held open. The period of irrevocability is (1) the amount of time stated in the offer, if there has been no payment or (2) a reasonable period if no deadline is stated. The maximum period of irrevocability is three months.

Enforceability. To be enforceable, a lease must either be in writing or require total payments, excluding payments for options to renew or buy, of under \$1,000.

A written lease must indicate that a contract has been made between the parties and describe the leased goods and the lease term. The description of the goods and the term, whether or not specific, is sufficient if it reasonably identifies what is described. A lease that omits or incorrectly states certain terms is enforceable only with regard to the term and the quantity of goods shown in the lease.

If (1) a contract is made that does not meet the requirements described above but is valid in other respects and (2) a party being sued admits in court that a lease was made, the contract is enforceable only as to the quantity of goods admitted.

Other leases that do not meet the requirements described above are enforceable:

1. if the goods are specially made or obtained for the lessee and are unsuitable for other customers and the lessor has substantially begun their manufacture or procurement under circumstances that indicate that they are for the lessee before receiving a notice of repudiation or
2. with respect to goods that have been received and accepted by the lessee.

The lease term is: (1) the term specified in the contract signed by a defendant in a suit, (2) the term admitted to by the defendant in court, or (3) a reasonable term.

If the parties agree on final terms, these cannot be contradicted by evidence of prior agreement or simultaneous oral agreement. But they can be supplemented or explained by (1) the course of dealing or performance or the usage of trade or (2) evidence of consistent additional terms unless the court finds that the contract was meant to be the exclusive statement of the terms.

Course of Performance. Any course of performance accepted without objection is relevant to the interpretation of an agreement regarding a contract that involves repeated chances for performance and an opportunity for the other party to object.

The agreement's express terms, its implementation, and trade practices must be construed as consistent with each other when this is reasonable. If this is not reasonable, the bill establishes the following hierarchy in interpreting the agreement: (1) its express terms control the course of performance, (2) the course of performance controls both the course of dealing and usage of trade, and (3) the course of

dealing controls usage of trade. Generally, the course of performance is relevant in showing that there has been a de facto waiver or modification of an inconsistent term.

Modification, Rescission, and Waiver. No consideration is needed for a lease modification to be binding. (Consideration refers to something of value in return for a performance or a promise of performance by another.) A signed lease agreement that excludes modification or rescission cannot be modified or rescinded except in writing, but it can be the subject of a waiver. The party who has made a waiver can retract it by providing reasonable notice to the other party, stating that strict performance will be required. This provision does not apply if the retraction would be unjust due to a material change of position of a party in relying on the waiver.

Identification of Goods Subject to the Contract

The parties can explicitly agree in the contract on how to identify the goods that are subject to it at any time. If there is no explicit agreement, the identification is made:

1. when the contract is made, if it is for a lease of existing, identified goods; or
2. when the goods are shipped or designated by the lessor as being the ones referred to in the contract if the lease involves goods that are not existing and identified.

The bill also covers leases of animals, including their unborn young. For the latter type of lease, identification occurs when the young are conceived.

Insurance

A lessee obtains an insurable interest in existing goods once they are identified, even if they are nonconforming and he can reject them. If the lessee's interest is based only on the lessor's identification of goods, the lessor can substitute other goods for them until default, insolvency, or notification to the lessee that the identification is final.

The lessor retains an insurable interest until the lessee exercises an option to buy them and the risk of loss has passed to the lessee.

The parties can agree as to (1) who must obtain and pay for insurance and (2) who the beneficiary is. These provisions do not affect insurable interests recognized under other aspects of the law.

Risk of Loss

For finance leases, the lessee bears the risk of loss. For all other types of leases, the lessor retains this risk.

If the risk of loss passes to the lessee because of a default, and the contract does not specify when the risk changes hands, the following rules apply:

1. if the contract allows or requires goods to be shipped by a carrier and does not require delivery at a specific destination, the risk passes when they are delivered to the carrier;
2. if such a contract specifies a delivery point and the carrier tenders them to the lessee, the risk passes when tendered;
3. if the goods are held by a bailee to be delivered without being moved, the risk passes when the bailee acknowledges the lessee's right to possess the goods; and
4. in any other case, the risk passes when the lessee receives the goods from a lessor or supplier who is a merchant, otherwise risk passes when they are tendered to the lessee. (A bailee is the person or entity to whom the property involved in the bailment is delivered. A bailment involves the delivery of property in trust for some special object or purpose and upon a contract to conform with it.)

Effect of Default on Risk of Loss

If the risk of loss is to pass to a lessee and the timing is not specified, the risk remains with the

lessor or supplier until cure or acceptance of the nonconforming goods, if the tender or delivery of goods gives a right of rejection. If the lessee rightfully revokes acceptance of a delivery, he can treat the risk of loss as having stayed with the lessor from the outset to the extent of any deficiency in his insurance coverage.

Whether or not risk is to pass to the lessee, if a lessee is in default under a lease with regard to conforming goods that have been identified, the lessor or supplier can treat the risk of loss as resting on the lessee for a commercially reasonable time to the extent of any deficiency in his insurance coverage.

Casualty to Identified Goods

If a contract requires that goods be identified when the contract is made and they suffer casualty because of a third party's fault or before the risk or loss has passed to the lessee:

1. the contract is avoided if the loss is total; and
2. if the loss is partial, or the goods have become nonconforming due to deterioration, the lessee may demand to inspect them and choose to treat the contract as avoided or accept them with an allowance against the rent for the goods.

If the lessee chooses the last option, he waives further rights against the lessor. The option concerning partial loss of nonconforming goods is not applicable for finance leases unless they are consumer leases.

Warranties

The bill clarifies and standardizes the law of warranties for leases. (A warranty is a statement or representation made by a seller or lessor of goods as part of the sale or lease contract that refers to the character, quality, or title of goods, by which the seller or lessor promises that the goods are as he represents them.) The bill's warranty provisions are similar to those in Article 2 of the UCC on sales, but

they do not protect title, since title remains with the lessor.

The bill imposes one express warranty and three implied warranties. The lessor creates an express warranty through affirmation of fact or a promise, a description of the goods, or a sample or model that becomes part of the basis of the bargain.

The bill imposes an implied warranty against interference which assures the lessee's enjoyment of the leasehold interest against a claim to or interest in the goods due to an act or omission of the lessor. When the lessor is a merchant who regularly deals in goods of the kind included in the lease, the bill imposes an implied warranty that the goods are delivered free of any rightful claim of infringement. When a lessee furnishes specifications to a lessor or supplier, he must indemnify these parties for any claim related to infringement that arises out of compliance with the specifications.

There are two kinds of implied warranties of quality: one of merchantability and the other of fitness for a particular purpose. These two warranties do not apply to lessors in finance leases. The warranty of merchantability operates where the lessor is a merchant. It assures, among other things, that the goods are considered by the trade to meet the description in the lease agreement, are fit for the ordinary purposes for which goods of that type are used, and conform to any promises or affirmations of fact on the container or label. The implied warranty of fitness for a particular purpose operates when the lessor, at the time the contract is made, has reason to know of any particular purpose for which the goods are required and that the lessee is relying on his skill or judgment to provide suitable goods.

All implied warranties can be excluded or modified by a written agreement, course of dealing, course of performance, or usage of trade. The bill imposes certain wording requirements on such agreements.

An express or implied warranty which benefits the lessee also extends to any person injured by breach of the warranty who reasonably would be expected to use or be affected by the goods. Any warranty exclusion,

modification, or limitation which is effective against a lessee is also effective against such third parties. But the bill prohibits any lease provision which would limit, modify, or exclude warranties that assure against personal injury.

Performance Under a Lease Contract

A lease imposes performance obligations on both parties. The bill allows several ways for the parties to deal with failure to perform these obligations, whether through the fault of one of them or through circumstances beyond their control.

Insecurity. If one of the parties has reasonable grounds for believing that the other will not perform its lease obligations, the bill allows the insecure party to demand additional written performance assurances and, if commercially reasonable, to suspend its own obligations until it receives the assurance. If the assurance is not given within a reasonable time but not more than 30 days after the demand, the lease is considered repudiated.

Under the bill, the fact that a party accepts a delivery or payment that does not conform to the lease terms does not mean that it cannot demand assurance of future performance. The bill requires that, between merchants, the reasonableness of the grounds for insecurity and the adequacy of assurances be judged according to standards commonly used in trade or business.

Repudiation Before Performance is Due. When one party repudiates a lease over something not yet due under the lease terms, the bill gives the other party certain remedies if the repudiation substantially impairs the lease's value to him. The aggrieved party may:

1. wait a commercially reasonable time for the other party to change its mind and perform its lease obligations;
2. demand additional assurances for future performance; or
3. use any other default right or remedy either in the lease itself or in the bill.

The aggrieved party may exercise a default remedy at the same time it is urging the other to change its mind or is demanding assurances of future performance. The aggrieved party may also suspend its own performance under the lease or, if it is the lessor, identify goods subject to the lease or salvage unfinished goods from the other party.

If the aggrieved party has not cancelled the lease, materially changed its position, or otherwise indicated that it considers the repudiation final, the other party may change its mind and, before the time for performing its obligation, clearly retract its repudiation. Such a retraction reinstates the repudiating party's rights under the lease, allowing for any delay the repudiation has caused.

Changes in Performance Caused By Outside Circumstances

Delivery Facilities. If, through no fault of the lessor or the suppliers, agreed-upon delivery facilities fail or become commercially impractical, a commercially reasonable substitute, if available, must be offered and accepted.

Payment Method. If the agreed-upon payment method is not available because of domestic or foreign government regulations and the lessee fails to provide a payment method that is substantially equivalent, the lessor may refuse to deliver or stop its supplier from delivering the released goods. If the lessee has already taken delivery, the bill requires the lessor to accept payment by whatever means or manner is provided for in the government regulations. This requirement applies as long as those regulations are not discriminatory, oppressive, or predatory.

Excused Performance. A lessor or lessor's supplier who fails to make or delays a delivery is not considered to be in default if its performance is affected either by something the parties assumed would not happen or by its good faith compliance with an order or regulation. This provision applies even if the government order or regulation is later invalidated.

If the event or government action affects only part of the lessor's or supplier's ability to perform it must reasonably and fairly allocate its production and

deliveries among its customers. An allocation is considered fair and reasonable under the bill, even if the lessor or supplier allocates part of the reduced capacity to regular customers who are not under contract at the moment and for its own needs for further production.

The bill requires the lessor to notify the lessee of nondelivery or of its estimated share of a reduced delivery within a reasonable time. If the lease does not require the lessor itself to supply the goods, the burden is on the actual supplier to notify the lessor and, if known, the lessee, of the delay, nondelivery, or reduced delivery.

A lessee who receives notice of a reduced delivery or indefinite or material delay may, by written notice to the lessor, either terminate the lease or modify it by accepting the reduced delivery and making an appropriate allowance in the rent payable, without further rights against the lessor. The lessee's notice may apply to all goods if, under a lease contract that authorizes delivery in separate lots, the value of the whole lease is substantially impaired.

If the lessee fails to modify the lease within a reasonable time, but no more than 30 days after receiving notice of the delay or reduced delivery, the lease contract lapses with respect to affected deliveries.

Finance Leases. The lessee may not modify a lease because of reduced delivery or indefinite or material delay when the lessor does not supply the goods directly to the lessee and the lease is not a consumer lease. Under such nonconsumer finance leases, the lessee's promises become irrevocable and independent once it accepts the goods.

An independent and irrevocable promise is one that is:

1. enforceable between the parties and by or against their assignees or other third parties; and
2. cannot be cancelled, terminated, modified, repudiated, excused, or substituted for

without the consent of the party who is owed the promised performance.

The bill states that this provision does not affect the validity under any other law of a lease covenant making the lessee's promises irrevocable and independent when the lessee accepts the goods.

Remedies for Default

General Provisions. Whether a lessor or lessee is in default is to be determined by the bill's provisions as well as the lease agreement. The injured party can avail himself of the remedies specified in the bill as well as the lease agreement. The agreement may provide for rights and remedies in addition to or in substitution for those in the bill and may change or limit the measure of damages under the bill unless the bill specifically prohibits this. If an exclusive or limited contract remedy fails to achieve its purpose or a provision for an exclusive remedy is unconscionable, the remedies under the bill apply.

Consequential damages may be liquidated or otherwise limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. It is prima facie unconscionable to limit, alter, or exclude consequential damages for injury to the person. It is not prima facie unconscionable to do so where the loss is commercial.

The lease agreement may provide for the liquidation of damages payable for default or any other act or omission, but the liquidation amount or formula must be reasonable in light of the harm anticipated at the time the agreement was entered.

The statute of limitations for an action for default under a lease contract, including breach of warranty or indemnity, is four years after the cause of action accrued. In the original lease contract, the parties may reduce the period to no less than one year. A cause of action for default accrues when the act or omission on which the default is based should have been discovered by the injured party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the underlying act or omission

is or should have been discovered by the indemnified party, whichever is later.

Default by Lessor. A lessor default is defined as (1) the lessor's failure to deliver goods in conformity with the contract, (2) the lessor's repudiation of the contract, (3) the lessee's rightful rejection of the goods, or (4) the lessee's justifiable revocation of acceptance of the goods. If the lessor defaults, the lessee may (1) cancel the lease contract, (2) recover as much of the rent and security as has been paid and is just, and (3) cover and recover damages as to all goods affected, whether or not they have been identified in the lease contract, or recover damages for nondelivery. If a lessor fails to deliver goods as required by the lease contract or repudiates the contract, the lessee may recover goods identified in the contract, recover the value of the goods plus damages (replevin) or obtain specific performance. The lessee may recover damages for the lessor's breach of a warranty.

On rightful rejection or justifiable revocation of acceptance, the lessee retains a security interest in goods in his possession for rent and security paid, and any expenses incurred in the inspection, receipt, transportation, and care and custody of the goods. The lessee may dispose of the goods in good faith and in a commercially reasonable manner. If the goods their delivery fail to conform to the lease contract, the lessee may reject or accept the goods or any commercial units.

For contracts which authorize or require the delivery of goods in separate lots to be separately accepted (installment lease contracts), a lessee may reject any nonconforming delivery if it substantially impairs the value of the delivery and cannot be cured or is due to a defect in the documents. If the nonconformity does not substantially impair the value of the installment contract as a whole, the lessee must accept the delivery if the supplier gives adequate assurance of its cure.

If a lessor or supplier has no agent or supplier at the place where the goods are rejected, a merchant lessee must follow reasonable instructions regarding the goods from the lessor or supplier. If the goods might rapidly

decline in value and no instructions have been given, the merchant lessee must attempt to sell, lease, or otherwise dispose of them for the lessor's account.

For goods which are not likely to rapidly decline in value or are not subject to a security interest of the lessee, the lessee after rejecting them must hold them for a reasonable time to await the lessor's or supplier's instructions, and then may store the rejected goods, ship them to the lessor or supplier, or dispose of them for the lessor's account.

If the lessee rejects any nonconforming delivery by the lessor or supplier and the time for performance has not yet expired, the lessor or supplier may make a conforming delivery within the time provided in the lease.

When a nonconformity substantially impairs the value to the lessee of a lot or commercial unit, the lessee may revoke acceptance if he accepted on the reasonable assumption the nonconformity would be cured. This does not apply to finance leases. He may also revoke acceptance if he had not discovered the nonconformity, and his acceptance was induced by the lessor's assurances or, except with a finance lease, by the difficulty of discovery before acceptance.

A lessee may revoke acceptance for defaults which do not relate to nonconformity of the goods themselves. Specifically, the lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of the lot or unit to the lessee. This provision does not apply to commercial finance leases.

A revocation of acceptance creates the same rights and duties with regard to the goods as a rejection.

After a lessor defaults, in specified instances, the lessee may cover by purchasing or leasing additional goods in substitution for those due from the lessor. The right of cover applies if the lessor fails to deliver goods that conform to the lease or repudiates the lease, if the lessee rightfully rejects the goods or justifiably revokes acceptance, or if the parties agree that this right applies. The bill establishes how to calculate the cost of cover. The lessee can recover

the present value, as of the date of the commencement of the new agreement, of the rent under the new lease applicable to the remaining term of the original lease agreement, less the present value of the rent for the remaining term under the original lease, together with incidental or consequential damages, less expenses saved due to the default.

The bill establishes the measure of damages if the lessee elects not to cover or the bill's cover provisions do not apply. The measure of damages is the present value, as of the date of default, of the market rent for the remaining term of the lease, less the present value of the original rent for the remaining term of the lease, plus incidental and consequential damages less expenses saved because of the default.

The bill defines incidental damages as expenses reasonably incurred in inspection, receipt, transportation, custody, and care of the goods, and any commercially reasonable expenses incident to the default or associated with effecting cover. Consequential damages resulting from a lessor's default include any loss resulting from needs or requirements the lessor had reason to know and which could not be prevented by cover or otherwise, and personal or property injury resulting from a breach of warranty.

The bill authorizes a court to order specific performance of the agreement if the goods are unique, and it grants a lessee the right of replevin or similar actions for goods identified to the contract if the lessee is unable to cover.

Default by Lessee. The lessee defaults when he (1) wrongfully rejects or revokes acceptance of goods, (2) fails to make a payment when due, or (3) repudiates with respect to a part or the whole of the agreement. For these defaults, the lessor may (1) cancel the lease contract, (2) dispose of goods identified to the contract, (3) withhold delivery of the goods and take possession of goods previously delivered, (4) stop delivery of the goods by any bailee, (5) dispose of or retain the goods and recover damages or rent, or (6) exercise other rights and remedies under the lease contract.

If a lessor does not pursue to completion a right or actually obtain one of the above remedies or, if the default does not substantially impair the value of the lease contract to him, he may recover damages for loss resulting from the default. If the default substantially impairs the value of the contract to the lessor, he may recover damages or exercise the available remedies.

The lessor can dispose of the goods after a statutory or other material default by the lessee, after the lessor refuses to deliver or takes possession of the goods, or, if agreed, after other contractual default.

The bill establishes how damages are to be calculated when the lessor disposes of the goods through a new lease, the new lease agreement is substantially similar to the original lease agreement, and the disposition was in good faith and in a commercially reasonable manner. The lessor can recover (1) the unpaid rent as of the date of commencement of the new lease term; (2) the value, as of the same date, of the rent under the original lease for the remaining term less the value of the rent under the new lease for a comparable period; and (3) incidental damages less expenses saved because of the lessee's default.

If the new lease does not qualify for this treatment, or if the lessor disposes of the goods by sale or in a manner other than leasing, the lessor may recover damages from the lessee just as if he had elected not to dispose of the goods. If the lessee has never taken possession of the goods, the measure of damages is based on factors assessed as of the date of default: (1) the accrued and unpaid rent; (2) the value of the original rent for the remaining term of the lease, less the value of market rent; and (3) incidental damages, less expenses saved because of the default. If the lessee has taken possession of the goods, the same items comprise the damages award, but the date used in calculation is the earlier of the date the lessor repossesses the goods or the date the lessee tenders the goods to the lessor.

If this measure of damages does not put the lessor in as good a position as performance would have, the measure of damages is the lessor's profit, including overhead, together with incidental damages, allowance

for reasonable costs incurred, and credit for payments or proceeds of disposition.

A lessor's incidental damages include commercially reasonable charges, expenses, or commissions incurred in stopping delivery and in the transportation, custody, and care of the goods after the default.

A lessor may sue for unpaid rent for goods that are (1) lost or damaged after risk of loss passes to the lessee; (2) retained by the lessee; or (3) in the possession of the lessor, but unable to be sold at a reasonable price after reasonable effort. In general, a lessor who elects to sue for rent due under a lease must hold identified goods in his possession for the lessee for the remaining lease term. If the lessor disposes of them before collection of the judgment and before the end of the remaining lease term, he recovers damages under the provisions of the bill dealing with disposition of the goods after default.

The bill also gives the lessor the right to recover for any loss or damage to his residual interest caused by the lessee's default.

Lessor and Lessee Relationships with Third Parties

Transfer of Lease Interest or Residual Interest. Under the bill, the transfer of a party's interest under the lease contract or of the lessor's residual interest is effective even if the contract prohibits the transfer or makes it an event of default. This applies even for transfers which occur by virtue of the creation or enforcement of a security interest. (The lessor's residual interest is its interest in the goods after expiration, termination, or cancellation of the lease contract.)

Although the transfers are effective, the lease provisions are generally enforceable to the extent that the bill authorizes remedies for their violation. Thus, if the transfer is an event of default, the aggrieved party has the rights and remedies provided generally for default under the bill, and, except as otherwise limited by the bill, the lease agreement. If the lease merely prohibits the transfer, or does not prohibit it but the transfer materially impairs performance, changes duties, or increases risks, the aggrieved party

may recover damages from the transferor and a court may grant other appropriate relief, including cancellation of the lease contract and an injunction against the transfer.

In certain instances, however, lease provisions restricting transfers are not enforceable even with respect to remedies. A lease agreement provision which prohibits the creation or enforcement of a security interest or makes it an event of default is not enforceable unless (1) the lessee actually transfers his right of possession or use of the goods in violation of the lease provision or (2) either party actually delegates material performance in violation of the provision. Moreover, the granting or enforcement of a security interest in the lessor's interest under the lease contract or his residual interest in the goods does not materially impair performance, change duties, or increase risks imposed on the lessee such as to permit recovery for damages under the bill, unless the lessor actually delegates a material performance.

A lease agreement provision that prohibits the transfer of a right to damages for default with respect to the whole contract or a right to payment arising from the transferor's performance of his entire obligation or that makes such a transfer an event of default is not enforceable. Such a transfer, moreover, does not materially impair performance, change duties, or increase risks such as to permit recovery for damages under the bill.

A provision in a consumer lease that prohibits a transfer or makes it an event of default must be specific, written, and conspicuous.

Subsequent Leases or Sales of Goods. If a subsequent lease of goods is made by a lessor, it is subject to the prior lease. But, a subsequent lessee in the ordinary course of business will take the goods free of the prior lease contract if the lessor is a merchant dealing in goods of the kind leased and the goods were entrusted to him by the existing lessee.

If a subsequent lease or sale of the goods is made by the lessee, the buyer or sublessee takes the goods subject to the prior lease. He takes them free of the prior lease if he buys or leases in the ordinary course

of business from a lessee who is a merchant dealing in goods of that kind and the goods were entrusted to that lessee by the lessor. (A person is a buyer in the ordinary course of business if he buys in good faith and without knowledge that the sale to him violates the rights of a third party, and he buys in ordinary course from a person in the business of selling goods of that kind.)

Lien Priorities. A lien for services or materials furnished in the ordinary course of business with respect to the leased goods takes priority over any interest of the lessee or lessor under a lease contract, unless the law which creates the lien provides otherwise.

In general, a creditor of the lessee takes subject to the lease contract. (Thus the creditor's lien or security interest can only attach to what the debtor has.) A creditor of the lessor has rights inferior to the lease contract unless (1) the creditor's lien attached before the lease contract became enforceable, (2) the creditor holds a security interest in the goods and the lessee gave value and took delivery with knowledge of the interest, or (3) the creditor's security interest was perfected before the lease agreement became enforceable.

A lessee in the ordinary course of business takes the leased goods free of any security interest in the goods created by the lessor. A lessee other than in the ordinary course of business takes them free of any security interest to the extent that it secures future advances made after the secured party learned about the lease or more than 45 days after the lease contract became enforceable, whichever occurs first.

Fixtures and Accessions. Under the bill, "[g]oods are fixtures when they become so related to particular real estate that an interest in them arises under real estate law." "Encumbrances" include liens on real estate and other nonownership interests.

In general, if goods are leased and become fixtures, the lessor with prior interests in them has priority over a conflicting interest of an encumbrancer or owner of the real estate, if the lessor perfects his interest with a fixture filing under Article 9 of the UCC before

the encumbrancer or owner records its interest on the land records. The bill specifies instances in which the lessor has priority regardless of whether he has filed. For example, if the fixtures are readily removable factory or office machines, the conflicting interest is a lien on real estate obtained through a court proceeding after the lease became enforceable or the encumbrancer or owner consented in writing to the lease. For cases not covered by the bill, the priority rules governing conflicting interests in real estate apply.

If a lessor of fixtures has priority over conflicting real estate interests, the lessor or lessee may remove the goods, as long as he reimburses the encumbrancer or owner of the real estate for the cost of repairing any physical damage. He is not responsible for the diminution in value of the real estate caused by the removal of the goods.

Under the bill, goods are "accessions" when they are installed in or affixed to other goods. In general, existing rights in a lease contract entered into before the goods became accessions are superior to any rights in the whole (to the goods with the accessions installed or affixed to them). Existing rights in a lease contract entered into at the time or after the goods became accessions are superior to all subsequently acquired interests in the whole, but are inferior to all interests in the whole existing when the lease contract was made. The interest of a lessor or lessee under a lease contract is subordinate to the interest of a buyer or lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions. It is also subordinate to the interest of a creditor with a security interest in the whole which was perfected before the lease contract was made, if the creditor makes subsequent advances without knowing about the lease contract.

If a lessor or lessee of accessions has an interest superior to all interests in the whole, he may remove the goods, but must reimburse any holder of an interest in the whole for the cost of repairing any physical damage. He is not responsible for the diminution in value of the whole caused by the removal of the goods.

Leases and Security Interests

Status of Security Interest. A security interest arising solely under the bill is generally subject to the UCC's secured transactions provisions (CGS Secs. 42a-9-101, et seq.). This parallels the current law concerning sales (CGS Secs. 42a-2-101, et seq.). But when a debtor does not have legal possession of the goods, the secured party's rights on default are governed by the bill, no security agreement is needed, and no filing required for perfection. (The term "perfected" refers to the status ascribed to a security interest after certain events have occurred or certain prescribed steps have been taken, such as filing certain documents with the secretary of the state or taking possession of the collateral. A perfected security interest has priority over an unperfected interest.)

Security Interest or Lease

Under current law, whether a lease is intended as security is based on the facts of each case. An option to purchase does not make the lease a security interest. Neither does a purchase option for no additional or for nominal consideration.

Under the bill, the question of whether a transaction creates a lease or security interest continues to be determined by factual circumstances. But a security interest is created if the lessee's payment for use of the goods is an obligation the lessee cannot terminate during the lease and:

1. the original lease term is at least as long as the remaining economic life of the goods,
2. the lessee must renew the lease for the duration of the goods' remaining economic life or become the owner,
3. the lessee has an option to renew the lease for the duration of the goods' remaining economic life for no or nominal additional consideration upon compliance with the lease, or
4. the lessee has an option to become the goods' owner for no or nominal additional consideration upon compliance with the lease.

No security interest is created merely because:

1. at the time of the transaction the present value or amount paid for use of the goods is substantially equal to or greater than the goods' fair market value;
2. the lessee assumes risk of loss or agrees to pay taxes; insurance; filing, recording, or registration fees; or service or maintenance costs;
3. the lessee has an option to renew the lease or become owner of the goods;
4. the lessee has an option to renew the lease for a fixed rent equal to or greater than the reasonably predictable fair market rent for use of the goods for the renewal term at the time the option is to be performed; or
5. the lessee has an option to become owner for a fixed price equal to or greater than the reasonably predictable fair market value at the time the option is to be performed.

In delineating the distinctions between leases and security interests, the additional amount the lessee must pay to renew is not "nominal" if:

1. when the renewal option is granted the rent is fair market value for the use of the goods for the renewal term determined at the time of exercising the option, or
2. when the option to become owner is granted the price to the lessee is the fair market value at the time of exercising the option.

An additional amount is considered nominal if it is less than the lessee's reasonably predictable performance cost if the option is unexercised.

In describing what does not create security interests the term "present value" means the amount, as of a date certain, payable in the future and discounted to the date certain. The discount is based on an interest rate specified by the parties if not "manifestly

unreasonable" at the time the transaction is entered into, or on a commercially reasonable rate taking into consideration the transaction's facts and circumstances at the time it was entered into. "Reasonably predictable" and "remaining economic life of the goods" must be determined with reference to the facts and circumstances at the time the transaction is entered into.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report
Yea 39 Nay 0